Supreme Court, U.S.
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NO._____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

LINDA O'NEAL,

Petitioner,

v.

JUDICIAL QUALIFICATION COMMISSION OF GEORGIA

Respondents,

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

PETITION FOR WRIT OF CERTIORARI

Linda O'Neal
Petitioner, pro se
Route 1, Box 478
Fort Valley, Georgia 31030
(912) 825-1678

125pp

QUESTIONS PRESENTED

1. Whether an elected judge in light of the First Amendment to the United States Constitution as applicable to the states through the Fourteenth Amendment can be disciplined and removed from office based wholly or in part on her making a truthful public statement on a matter to which she is a party?

2. Whether an elected judge in light of the Fifth Amendment to the United States Constitution as applicable to the states through the Fourteenth Amendment can be disciplined and removed from office based wholly or in part on her refusal to acknowledge that any specific action taken by her was improper and her refusal to accept personal responsibility for the difficulties she experienced with other elected officials?

3. Whether an elected judge in light of the Fifth Amendment to the United States Constitution as applicable to the states through the Fourteenth Amendment can be disciplined and removed from office if her lawyer is not accorded a reasonable period of time exceeding two days in which to prepare a defense for a disciplinary proceeding before the Judicial Qualification Commission that involves a voluminous amount of evidence?

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I. This case raises issues of exceptional legal importance for judges who express public opinion about social, political, or governmental matters.

A. The Supreme Court of Georgia violated a judge's right to freedom of expression in contravention of the First Amendment to the United States Constitution by removing her from office for making a truthful public statement about her difficulties with other elected county officials, who had violated the law and failed in the performance of their statutory duties.

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II. This case raises a novel issue of great legal significance for judges who are called before judicial disciplinary bodies on charges of misconduct.

A. The Supreme Court of Georgia violated a judge's due process rights in contravention of the Fifth Amendment to the United States Constitution by removing her from office for refusing to acknowledge that any specific

action she had taken was improper and for refusing to accept personal responsibility for the difficulties she experienced with the other elected officials of Peach County, who had violated the law and failed in the performance of their statutory duties.

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III. This case raises the issue of adequacy of legal counsel for judges called before judicial disciplinary bodies on charges of misconduct.

A. The Supreme Court of Georgia violated a judge's due process rights in contravention of the Fifth Amendment to the United States Constitution by removing her from office while the hearing record relied upon for the removal determination showed that she was denied adequate legal counsel at the hearing.

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PETITION FOR WRIT OF CERTIORARI

The Petitioner, Linda O'Neal, appearing pro se, respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of Georgia, which ordered her removal from office as the elected Chief Magistrate of Peach County, Georgia.

OPINIONS BELOW

The Order of the Supreme Court of Georgia denying the Motion for reconsideration is not reported and is appended hereto at A31. The decision by the Supreme Court of Georgia is reported at 454 S.E.2d 780 (Ga. 1995) and is appended at A1. The Findings and Recommendations of the

Judicial Qualifications Commission are not reported and are appended at A12.

JURISDICTION

The decision of the Supreme Court of Georgia was entered on March 17, 1995. Petitioner's Motion for Reconsideration, which was timely filed, was denied by the Supreme Court of Georgia on March 30, 1995. This Court has jurisdiction to review the judgment of the Supreme Court of Georgia by Writ of Certiorari pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

1. The First Amendment to the United States Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

2. The Fifth Amendment to the United States Constitution provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be

> twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

3. The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws...

STATEMENT OF THE CASE

1. *Preliminary Statement*

Judge Linda O'Neal, Chief Magistrate of Peach County Georgia, believing that the five members of the Peach County Board of Commissioners had attempted to unlawfully intimidate her and her court with respect to a pending matter, in violation of a Georgia criminal statute, OCGA § 16-10-97, obtained felony warrants for their arrest.[1] Almost

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[1] OCGA § 16-10-97 Intimidation or obstruction of jurors or court officers.

immediately following the commissioners' arrest fifteen citizens filed complaints with the Judicial Qualification Commission (hereinafter JQC).[2] None of the complaints alleged incapacity, corruption, neglect of office, or a continuing pattern of misconduct. In sum, they were essentially politically motivated non-specific gripes emanating from the publicized arrest of the commissioners. The JQC initially "instructed" O'Neal to meet with its members on January 28, 1994. A13. She met with the JQC "as directed".[3] A13. Following the meeting the JQC conducted an investigation and subsequently filed formal charges against O'Neal. A hearing was held on September 29 and 30, 1994.

O'Neal, as evidenced by the record, committed no crime, breached no tenant of public trust or principle of morality, professional manners, courtesy, or judicial temperament. Instead, "she sought to have done nothing more than was provided for under law".[4] Yet, on the basis of an extremely erroneous and prejudicial hearing record, the

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A person who by threat or force or by any threatening letter or communication: (1) Endeavors to intimidate or impede any grand juror or petit juror or any officer in or of any court of this state or any court of any county or municipality of this state or any officer who may be serving at any proceeding in any such court while in the discharge of such juror's or officer's duties... shall, upon conviction thereof, be punished by a fine of not more than $5,000.00 or by imprisonment for not more than five years, or both. (emphasis added).

[2] Over half of the persons who complained to the JQC attend the same church that two of the Board of commissioners attend. Several are former co-workers of the same two commissioners. And nearly all are related by blood, marriage, or business activity to members of the Peach County Board of Commissions.

[3] At the meeting O'Neal "denied the allegations made against her, both orally and in writing; and stated unequivocally that she had at all times adhered to the highest standards of judicial conduct". A13.

[4] Benham, P.J., Presiding Justice of the Supreme Court of Georgia, dissenting with respect to the majority opinion in this case. A8

Judicial Qualification Commission on December 12, 1994, recommended to the Supreme Court of Georgia that O'Neal be removed from office. A12. O'Neal timely filed in the Supreme Court of Georgia a Petition and Supporting Brief in Objection to the JQC's Findings and Recommendations. The Supreme Court of Georgia in a five to one opinion dated March 17, 1995, held that she had violated the Code of Judicial Conduct and ordered that she be removed from office.[5] A1 Presiding Justice Benham, P.J., sharply criticized the majority's opinion and dissented on freedom of expression grounds and the inappropriateness of considering O'Neal's refusal to accept personal responsibility for the difficulties she experienced with other elected officials of Peach County in determining that she is unfit to hold judicial office. A8 O'Neal filed a timely Motion for Reconsideration, which was denied by the Supreme Court of Georgia in an order dated March 30, 1995. A31

2. *Statement of Facts*

Linda O'Neal , who had never ran for political office before, in a contested election, unseated a sixteen year incumbent for the office of Chief Magistrate of Peach County, Georgia. Her term of office began January 1, 1993. The record in this case shows that hostile reaction to her political upset was present from the moment she took office. Immediately upon assuming her duties she discovered that much of the court's office equipment, supplies, files, financial records and bank statements were missing, most of which were never returned by her predecessor. Besides taking over a looted court she faced uncooperative behavior by the sheriff and the appointed clerk of the County Board of Commissioners.[6, 7, 8, 9] Notwithstanding the problems with the

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[5] *See* the specific canons cited *infra* note 28.

[6] Her written requests to the County Board of Commissioners for

Board's clerk or the Board's failure to provide the court with necessary supplies and equipment,[10] the relationship between O'Neal and the individual members of the Board of Commissioner's remained friendly for the first eight months of her term in office .

Meanwhile the sheriff arbitrarily refused for three months to provide O'Neal with the alarm code to the courthouse, thus frustrating her attempt to fulfill her statutory duties to provide night and weekend bond and commitment hearings, and other essential court services. Further, the sheriff and his deputies grossly failed, on virtually a daily basis, to provide the magistrate court with duties required by statute,[11] and many of the duties that were undertaken were improperly performed. Finally, greatly concerned about the magistrate court's administration of justice, O'Neal researched Georgia case law for guidance with respect to the sheriff and his deputies' non-performance and improper performance of required court related duties. Finding no cases on point she

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essential office equipment and supplies, such as pens, pencils, stationary, and chairs were often either totally ignored or were fulfilled months later. A57.

[7] The equipment and supplies that were eventually provided were often inadequate for the magistrate court to properly function. A57.

[8] The situation was so serious that O'Neal had to frequently spend her own personal money to purchase essential supplies needed for the proper functioning of the court. A58.

[9] O'Neal repeatedly requested budget information needed for proper court administration from the Board's clerk, but the information was never provided. A57.

[10] Georgia Statute, OCGA 15-10-5, states: "The county governing authority shall provide suitable offices and courtrooms for the use of the magistrate court and shall supply all fixtures, supplies, and equipment necessary for the proper functioning of the magistrate court."

[11] *See infra* note 13.

turned to the Georgia Constitution, Statutes, Court Rules and Code of Judicial Conduct, and found what appeared to be authority for her issuance of orders to the court's officers to compel performance of their court related duties.[12] In reliance on this apparent authority she issued four separate orders to the sheriff and his individual deputies on September 13, 1993. Altogether, the orders instructed the sheriff and his deputies to comply with the provisions of OCGA § 15-10-100(b), which requires a sheriff to perform the duties of constables if the county governing authority has not provided for the

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[12] Georgia Constitution Art. VI, Section I, Para. IV, states:

Each court may exercise such powers as necessary in aid of its jurisdiction or to protect or effectuate its judgments; but only the superior and appellate courts shall have the power to issue process in the nature of mandamus, prohibition, specific performance, quo warranto, and injunction. Each superior court, state court, and other courts of record may grant new trials on legal grounds.

Georgia Statute, OCGA § 15-1-3 states, "every court has power":

(1) To preserve and enforce order in its immediate presence and, as near thereto as is necessary, to prevent interruption, disturbance, or hindrance to its proceedings;

(2) To enforce order before a person or body empowered to conduct a judicial investigation under its authority;

(3) To compel obedience to its judgments, orders, and process and to the orders of a judge out of court in an action or proceeding therein;

(4) To control, in the furtherance of justice, the conduct of its officers and all other persons connected with a judicial proceeding before it, in every matter appertaining thereto;

(5) To administer oaths in an action or proceeding pending therein and in all other cases when it may be necessary in the exercise of its powers and duties;

(6) To amend and control its processes and orders, so as to make them conformable to law and justice, and to amend its own records, so as to make them conform to the truth; and

(7) To correct its own proceedings before final judgment.

Canon 3C(2) of the Judicial Code of Conduct states:

Judges shall require* their staffs, court officials and others subject to their direction and control to observe the standards of fidelity and diligence that apply to the judges and to refrain from manifesting bias or prejudice in the performance of their official duties.

appointment of constables by the chief magistrate, and OCGA § 15-10-102, which sets forth the powers and duties of constables.[13] O'Neal sent the orders to chief deputy Deese. Initially, deputy Deese told O'Neal that he was serving the orders, but in fact he was not serving the orders. At the JQC hearing he admitted under oath that he had lied to O'Neal. When later he refused to serve the orders, O'Neal, pursuant to statutory law, issued an order to the coroner to serve the orders on the sheriff.[14] According to O'Neal's uncontradicted testimony the coroner after picking up the orders from the magistrate court shortly returned and shoved the orders into her hand and stated, "I am not going to serve that" and "I am not serving anything you say, I don't have to". He then "stormed" out of the court's offices.[15] The coroner also

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[13] Georgia Statute, OCGA § 15-10-100, titled Appointment of constables; compensation; chief constable, states in part: "(a) Unless otherwise provided by local law, the county governing authority may provide for the appointment of constables by the chief magistrate. Constables so appointed shall serve at the pleasure of the chief magistrate. The compensation of constables so appointed shall be fixed by the county governing authority. (b) If no provision is made for the appointment of constables the sheriff and his deputies shall perform the duties of constables...." (emphasis added).

Georgia Statute, OCGA § 15-10-102, sets forth the powers and duties of constables as follows:

(1) To attend regularly all sessions of magistrate court;
(2) To pay promptly over money collected by them to the magistrate court;
(3) To execute and return all warrants, summonses, executions, and other processes directed to them by the magistrate court; and
(4) To perform such other duties as are required of them by law or as necessarily appertain to their offices.

[14] OCGA § 45-16-8 states: If any person makes an affidavit stating (1) that a sheriff is disqualified from acting in any proceeding, which disqualification was not apparent at the outset of the proceeding, or (2) that a sheriff or his deputy refuses to serve a writ or other process, then the clerk of the court from which the process issues shall place the process in the hands of the coroner for execution. The clerk may compel the sheriff to return the writ or other process to the clerk's office in order to allow for execution by the coroner. (emphasis added).

[15] Judicial Qualification Commission formal hearing transcript at p. 339.

handed O'Neal a one sentence letter which stated that he was not authorized to serve the orders, which provided no explanation and cited no authority for such statement.[16]

Following these refusals to serve the orders O'Neal issued a Rule Nisi to determine whether Deese should be held in civil contempt and a Rule Nisi for criminal contempt against the coroner. At Deese's civil contempt hearing attended by the sheriff and most of his deputies, O'Neal, after verbally issuing the orders to the deputies, purged Deese of contempt. On September 24, 1993, after meeting with the sheriff in an attempt to resolve some of the problems, O'Neal issued an indefinite stay with regard to the coroner's hearing.

Approximately an hour later, the Board of Commissioners, at a called meeting in front of newspaper and television reporters, read a letter to O'Neal in which they stated,

> The last straw was your recent group of memos to Sheriff Becham where you ordered him to do certain things. If you have a problem with the Sheriff, it is your responsibility to get with him and work out whatever the situation requires- and not to just serve papers on him. In addition, you have brought contempt charges against his deputy and against the County Coroner. This is not the way to establish a good working relationship with people...

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[16] The coroner's letter stated, " As Peach County Coroner, I am not authorized to serve these Orders."

> We have decided to give you 30 days to see if you can get your act together. If you continue with your present attitude, causing problems and conflict in the county government, we will have no choice but to recind [sic] your salary increase and return you to the original salary granted to you by the previous commissioners.

O'Neal testified at the JQC hearing that she was intimidated by the Board's letter. In response to the threat she obtained felony warrants two months later from a neutral and detached magistrate judge located in a distant county. The judge who issued the warrants testified on deposition that he made an independent determination that there was probable cause to believe that the commissioners had violated OCGA § 16-10-97.[17] O'Neal delivered the warrants to the sheriff seven days later.[18] The commissioner's were then arrested and immediately released on bond.

An appointed special prosecutor dismissed the warrants approximately two months later.[19] Shortly thereafter O'Neal issued a public statement with respect to the dismissal, which also summarized her problems with the sheriff and the board of commissioners. A91.

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[17] *See* statute cited *supra* note 1.

[18] The issuing magistrate called O'Neal on December 22, 1994, the day after issuing the warrants and requested that she verify with the Georgia Attorney General the proper county name to appear on the warrants. She was able to verify the proper county name the afternoon of December 23, 1994. The next day was Christmas Eve so she kept the warrants over the Christmas holidays until the next regular business day, December 28, 1994.

[19] The District Attorney of a neighboring county was appointed special prosecutor by a Peach County Superior Court Judge. He dismissed the warrants on the grounds of insufficient evidence.

Within a few days following the commissioners' arrest a group of fifteen citizens, including the Board of Commissioners, filed similar complaints with the JQC, which expressed concern over O'Neal's actions.[20]

3. *The JQC Inquiry*

Prompted by the complaints, the JQC initially "instructed" O'Neal to meet with its members on January 28, 1994. A13. Appearing without counsel, she met with the JQC "as directed".[21] A13. At the meeting O'Neal, unexpectedly, experienced a highly charged atmosphere of bias against her, which later led to a motion for recusal of three JQC members.[22] Thereafter, the JQC conducted an investigation and subsequently filed formal charges against O'Neal. A hearing was held on September 29 and 30, 1994.

Prior to the hearing two preliminary motions were presented to the JQC, a motion for continuance and a motion for recusal of three members of the JQC. Both were denied. A continuance was necessary because O'Neal's initial attorney was caught in the midst of a criminal trial, a death penalty case from which he could not absent himself. The same problem caused O'Neal to suffer inadequate representation at the pretrial conference two days earlier. O'Neal was notified on September 26, 1994, that she needed to find substitute counsel for the pretrial conference scheduled for September 27, 1994. With less than twenty four hours notice her

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20 *See supra* note 2.

21 *See supra* note 3.

22 Judge Hugh Lawson, who later acted as presiding hearing officer at the JQC hearing told O'Neal during the meeting, without being specific, that she was guilty of judicial intimidation, an allegation which later became part of the formal charges.

substituted counsel appeared at the pretrial conference. The quantum of evidence in the case made it impossible for him on such short notice to become adequately familiar with all of it or to meaningfully discuss the case with O'Neal.[23] Thus, at the hearing when the defense presented its case, favorable evidence was denied admission because notice of it had not been given at the pretrial conference.[24] Moreover, his lack of knowledge about the case caused him to be unaware of the recusal issues.

Her original attorney still in trial, O'Neal appeared at the JQC hearing on September 29, 1994, with her substitute counsel. Her attorney advised the JQC at the beginning of the hearing that his short exposure to the case caused him to believe that he would be ineffective and not be able to adequately represent O'Neal without being given adequate time to prepare.[25] Nonetheless, counsel's motion for a continuance was denied and O'Neal was forced to proceed with ineffective counsel.[26]

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[23] There were hundreds of pages of documents and over 450 deposition transcript pages involved in the matter, which were ultimately admitted into evidence.

[24] e.g., at the JQC hearing O'Neal attempted to admit evidence of positive community support for her as Chief Magistrate Judge of Peach County. Over eighty individuals either wrote letters, signed petitions, or completed favorable court questionnaires, which significantly countered the allegations of negative publicity in the fifteen JQC complaints filed against O'Neal.

[25] O'Neal's substitute counsel's oral motion for continuance included statements such as, "I do not feel like I am adequately prepared to represent Judge O'Neal...I think that I would not be able to adequately represent Judge O'Neal in spite of my humanly, over humanly effort over the past two days to become familiar with these documents. As you are aware, there are, I believe, ten or more depositions taken in this case. There are literally hundreds, hundreds, I think we are into the hundreds of exhibits at this point, thousands of pages of documents...I feel that I would be ineffective." JQC Formal Hearing Transcript. p. 11-17.

[26] The JQC offered to continue the hearing if O'Neal would take a leave of absence from her office during the continuance. Such a coercive offer was not acceptable to O'Neal and she declined the offer.

Following the hearing the JQC issued its findings and recommendations. It found that O'Neal had violated four provisions of the Code of Judicial Conduct, and recommended that she be removed from office. A3.

O'Neal timely filed in the Supreme Court of Georgia a Petition and Supporting Brief in Objection to the JQC's Findings and Recommendations. A53. The JQC filed no response to her petition. In her petition, O'Neal objected to the JQC's findings and recommendations with respect to each and every charge on the grounds that they grossly misstated the facts and recklessly misrepresented the truth.[27] A53. Additionally, she challenged the fairness of the hearing and the lack of due process accorded her during the proceeding. A54.

4. *Decision of the Supreme Court of Georgia*

A. *Majority Opinion*

The Supreme Court of Georgia in a five to one opinion dated March 17, 1995, held that she had violated Canons 1, 2 A and B, 3 B (4), and 3 E (1) of the Code of Judicial Conduct and ordered that she be removed from office.[28] The court characterized the orders she issued to the

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[27] Extremely venomous language was used throughout the JQC's e written findings and recommendations, which grossly overstated and misstated the facts and Petitioner's conduct.

[28] CANON 1. An independent and honorable judiciary is indispensable to justice in our society. Judges shall participate in establishing, maintaining, and enforcing high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

CANON 2A. Judges shall respect and comply with the law* and shall act at all times in a manner that promotes public confidence in the integrity and

sheriff and his deputies as being in the nature of mandamus, and then discussed the inability of a magistrate court to issue writs of mandamus. It concluded by saying,

> We thus find O'Neal exceeded the authority vested in the magistrate court in issuing orders to require court officers to comply with their statutorily imposed duties.

A5.

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impartiality of the judiciary.

CANON 2B. Judges shall not allow their family, social, political or other relationships to influence their judicial conduct or judgment. Judges shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor should they convey or permit others to convey the impression that they are in a special position to influence them. Judges should not testify voluntarily as a character witness.

CANON 3B. Adjudicative Responsibilities. (4) Judges shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom they deal in their official capacity, and shall require* similar conduct of lawyers, and of staff, court officials, and others subject to their direction and control.

CANON 3E(1). Judges shall disqualify themselves in any proceeding in which their impartiality might reasonably be questioned, including but not limited to instances where: (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of disputed evidentiary facts concerning the proceeding; (b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it; (c) the judge or the judge's spouse, or a person within the third degree of relationship* to either of them, or the spouse of such a person, or any other member of the judge's family residing in the judge's household*: (i) is a party to the proceeding, or an officer, director, or trustee of a party; (ii) is acting as a lawyer in the proceeding; (iii) is known* by the judge to have a more than de minimis* interest that could be substantially affected by the proceeding; (iv) is to the judge's knowledge* likely to be a material witness in the proceeding.

With respect to O'Neal conducting deputy Deese's contempt hearing, the court opined that "another judge was required to hold the contempt hearing". A6. The court relied on the JQC "factual finding" that O'Neal took the above described "actions in order to intimidate and coerce the sheriff and his deputies".[29] A6.
With regard to this finding the court stated,

> Use of the power of the judicial office to issue orders and to exercise its contempt power in order to intimidate and coerce other elected officials violates Canons 2A, 2B, and 3E(1) and demonstrates wilful [sic] misconduct in office.

A6.

Although the court noted the commissioner's statement that it would reduce O'Neal's "salary was contrary to the express language of OCGA § 15-10-23(b)",[30] it determined that,

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[29] In the motion for reconsideration O'Neal stated the following objection to this finding: O'Neal was never charged with intimidation and coercing or attempting to intimidate and coerce the sheriff and his deputies and thus she was never given an opportunity to defend against that specific accusation, in violation of her due process rights as guaranteed by the Fifth Amendment to the U. S. Constitution as applicable to the states through the Fourteenth Amendment. She respectfully submits to this Court that it is now unfair to use such a finding to determine that she committed willful misconduct in office and thereby violated Canons 2A, 2B, and 3E(1). Notwithstanding this argument, the record contradicts the JQC finding and instead shows that the sheriff and his deputies were not intimidated by the orders and Deese's Rule Nisi Hearing. Deese testified at the JQC hearing that he told the JQC investigator that he thought the problems with the Magistrate Court were minor in nature. [FHT p. 205]. Deese admitted under oath at the JQC hearing, a year after they were issued, that none of the orders had been served [FHT p. 194, 204]; and the documentary exhibits of O'Neal's correspondence and her testimony shows that the sheriff and his deputies still do not properly perform their duties with respect to the Court. A43.

[30] The statute provides that no "magistrate's compensation or supplement shall be decreased during any term of office". A6.

> obtaining *felony warrants* for the entire board based upon a clearly unenforceable threat[31, 32, 33] issued in the midst of a political squabble was not an appropriate or judicious response by O'Neal.[34]

A6.

The court found that O'Neal's obtaining of the arrest warrants and then her public statement[35] after they were dismissed was conduct that violated Canons 1, 2 A, 2 B, and 3 B (4) and was prejudicial to the administration of justice and undermines public confidence in the impartial functioning of judicial officers. A6.

Lastly, the court focused on O'Neal's refusal to "acknowledge that any specific action was improper" and the

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31 O'Neal testified at the JQC hearing that she was intimidated by the Board's letter. *See supra* p. 10.

32 Apparently the court did not agree with O'Neal's assertions in her petition, which argued that the plain language of OCGA 16-10-97 included "attempted intimidation" within its meaning, and that once the threat was made and the intimidation attempted the threat did not have to be carried out for a crime to have occurred. A6.

33 In her motion for reconsideration O'Neal advised the court that she did not obtain felony warrants for the entire board of commissioners based upon "a clearly unenforceable threat," as proven by the fact that the board carried out the threat and reduced her salary after the JQC hearing had occurred, the closing arguments had been submitted, and the hearing record was established. A33.

34 As O'Neal pointed out in her motion for reconsideration, at the time the threat was communicated to O'Neal there was no political squabble existing between the commissioners and O'Neal. A44.

35 The statement was factually accurate and completely true, as supported by the record, and is included in the appendix to this petition. A91.

fact that she did not "accept personal responsibility for the difficulties she experienced with the other elected officials of Peach County." A7. Their opinion ended with this statement:

> We take this refusal into account in determining that O'Neal's acts of wilful [sic] misconduct and prejudicial conduct demonstrates she is presently unfit to hold judicial office.

A7.

The court did not address any due process issues raised in O'Neals petition. A53.

B. *Dissenting Opinion*

Benham, P.J., Presiding Justice, disagreed with the majority's opinion that O'Neal should be removed from office.[36] After stating that "the drastic action of removing a judge from office is one that should be taken with great caution and concern", he said,

> When a judge has been elected by the people, removal from office is tantamount to impeachment...Judges do not lose their right to freedom of expression when they take the bench. In fact, public officials - including judges - are often times called upon to explain their conduct in public forums. Our democratic society is based on a free flow of information and ideas and we have jealously guarded this right for as long as the republic

[36] He did agree with Divisions 1 and 2 of the majority's opinion , but disagreed with Divisions 3 and 4, and the majority's decision to remove O'Neal from office. A8.

> has existed. Donning a robe does not strip a judge of freedom of expression.
>
> The majority opinion does not state how the statement by the judge in the local paper violated the Code of Judicial Conduct or undermined public confidence in the office. Judges are accountable to the public and they should not be unduly punished for explaining their actions to the public. In the absence of a showing that the statement by the judge violated a specific provision of the Code of Judicial Conduct, I must disagree with the majority's determination.

A9.

Justice Benham also disagreed with the majority's opinion in finding O'Neal unfit to hold judicial office on the basis that she "refused to acknowledge that any specific action was improper" and did not "accept personal responsibility for the difficulties she experienced with the other elected officials of Peach County". He commented further on this part of the majority's opinion and stated,

> This statement is a slim reed indeed upon which removal from office is justified. We must keep in mind that, while the actions taken by the judge were unauthorized, she sought to have done nothing more than was provided for under law. Therefore, I disagree with the majority's determination in Division 4 that refusal to admit fault is justification for removal from office.

A9.

In her motion for reconsideration, which was denied by the court on March 30, 1995, O'Neal challenged the court's opinion with respect to her public statement on First Amendment grounds, and the court's consideration of her refusal to acknowledge that any specific action was improper and her refusal to accept personal responsibility for the difficulties she experienced with the other elected officials of Peach County on Fifth Amendment grounds. A45. Also, In her motion for reconsideration, O'Neal challenged on Fifth Amendment grounds the lack of due process accorded her by the JQC, and the denial by the JQC of the motion for continuance presented by her attorney. A48..

REASONS FOR GRANTING THE WRIT

I. This case raises issues of exceptional legal importance for judges who express public opinion about social, political, or governmental matters.

A. The Supreme Court of Georgia violated a judge's right to freedom of expression in contravention of the First Amendment to the United States Constitution by removing her from office for making a truthful public statement about her difficulties with other elected county officials, who had violated the law and failed in the performance of their statutory duties.

The result of the decisions below is that judges in Georgia who speak out against corruption, malfeasance, misfeasance, or nonfeasance, committed by elected or non-elected government officials, or who "explain their

conduct in public forums",[37] risk being removed from office at the arbitrary or retaliatory whim of those in power, while judges who remain silent have a better chance at remaining in office because of their silence.

Moreover, as a published opinion, the decision below by the Supreme Court of Georgia is likely to receive widespread study and consideration throughout the State of Georgia and the nation. Given the novel nature of the facts and the presence of a First Amendment issue, and the few reported cases involving removal of a judge for conduct involving freedom of speech, the case could be used to unjustifiably restrict the First Amendment rights of judges. Accordingly, its misapplication by the courts and potential chilling effect upon judges who might otherwise express their opinion with respect to "matters of legitimate public concern"[38] is significant.

In this case, the First Amendment issue is similar to the one involving an elected Texas Justice of the Peace who brought suit in federal court against the Texas Commission on Judicial Conduct and its commissioners for a public reprimand of him for making statements critical of the administration of the county judicial system. Scott v. Flowers, et al., 910 F.2d 201 (5th Cir. 1990).[39] In Scott, the

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[37] *Quoting* from Justice Benham's dissent. A8.

[38] *Quoting* from Scott v. Flowers, et al., 910 F.2d 201 (5th Cir. 1990).

[39] Soon after taking office, Scott became concerned about what he perceived to be an injustice in the administration of the county court system. Apparently, the great majority of defendants who appealed their traffic offense convictions from justice or municipal courts to the Fort Bend County Court-at-law during Scott's term in office succeeded in having the charges against them dismissed or the fines sharply reduced.[1] This practice, Scott believed, unfairly allowed those "in the know" to violate the traffic laws repeatedly and with impunity while penalizing less sophisticated individuals who committed the same offenses.

court held "that the Commission could not constitutionally reprimand Scott for making public statements critical of the court-at-law and the district attorney's office".

Scott, 910 F.2d at 213.

In September 1983, Scott took his concerns to the local government and the citizenry by writing an "open letter" to county officials. In the letter, Scott attacked the district attorney's office and the county court-at-law for dismissing so many traffic ticket appeals and called upon the county officials to offer suggestions to remedy the problem. If the county refused to change this practice, Scott concluded, the public at least should be made aware of it, and the court-at-law "would be really busy then."[2]

The letter was circulated to the local press and prompted several newspaper articles. It also attracted the attention of Thomas Culver, one of the judges of the court-at-law, who wrote Scott an angry letter criticizing him for not raising his concerns privately. Eventually, both the newspaper articles and Culver's letter found their way into the files of the Texas Commission on Judicial Conduct (the "Commission").[3]

In November 1983, the Commission's executive director, defendant Robert C. Flowers, advised Scott by letter that he had been the subject of several complaints received by the Commission.[4] Scott responded to the complaints both in writing and in person, having been invited by Flowers to appear informally before the Commission.

On March 19,1984, the Commission issued a formal public reprimand of Scott. After first acknowledging that Scott's intentions were good and his personal integrity was not at issue, the Commission then chided him for being "insensitive" in certain "written and oral communications" addressed both to the litigants in his courtroom and to the public at large. Such "insensitivity," the Commission stated, was inconsistent with the proper performance of Scott's duties as justice of the peace and served only to "cast public discredit upon the judiciary." The Commission concluded the reprimand with a warning, advising Scott to be "more restrained and temperate in written and oral communications in the future."

Although the Commission failed to cite any examples of Scott's alleged insensitivity to litigants,[5] it was quite specific in identifying the public comments it found to be objectionable. The Commission criticized Scott both for his statement in the open letter that the county court-at-law "would be really busy" if the public realized that an appeal of a traffic ticket was tantamount to a dismissal and for his comment to a reporter, in connection with the letter, that "the county court system is not interested in justice."[6]

Scott v. Flowers, et al., 910 F.2d 201 (5th Cir. 1990).

The public statement issued by O'Neal, which the court found violated the Code of Judicial Conduct, was a very tempered expression of the facts leading up to and the reasons for her past official actions. It was the type of speech that falls well within the core concepts of First Amendment protection. O'Neal's removal from office was based in whole or in part on her use of such speech, and the court, without explaining how such speech violated the Code of Judicial Conduct or undermined public confidence in the judiciary or her office has violated her First Amendment Rights.[40]

II. This case raises a novel issue of great legal significance for judges who are called before judicial disciplinary bodies on charges of misconduct.

A. The Supreme Court of Georgia violated a judge's due process rights in contravention of the Fifth Amendment to the United States Constitution by removing her from office for refusing to acknowledge that any specific action she had taken was improper and for refusing to accept personal responsibility for the difficulties she experienced with the other elected officials of Peach County, who had violated the law and failed in the performance of their statutory duties.

The decision below by the Supreme Court of Georgia, standing as a precedent decision, will put judges in Georgia in risk of being removed from office if they are charged with misconduct and they refuse to acknowledge that any specific action they have taken was improper or refuse to accept

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[40] *See* Justice Benham's dissent. A9.

personal responsibility for the difficulties they have experienced, or they deny the charges against them. The decision is oppressive and coercive, and it negates any notion of fundamental fairness in violation of the due process clause of the Fifth Amendment.

The Supreme Court of Florida has recently expressed the following opinion concerning judges who refuse to admit wrongdoing or refuse to express remorse: "Every judge who believes himself or herself truly innocent of misconduct has a right -- indeed, an obligation -- to express that innocence to the Commission ..." Inquiry Concerning A Judge No. 93-62, RE: P. Kevin Davey, Supreme Court of Florida (1994).

The Supreme Court of Georgia previously adopted a statement with respect to denial of guilt and remorsefulness, which in part states:

> Can it be said that one who denies guilt and, therefore, is not remorseful for his wrongdoing has been rehabilitated? The question is best analyzed and answered by the logic of In the Matter of Hiss, Mass. 333 NE2d 429, 437 (1975). 'Simple fairness and fundamental justice demand that the person who believes he is innocent though convicted should not be required to confess guilt to a criminal act he honestly believes he did not commit. For him, a rule requiring admission of guilt and repentance create a cruel quandary: he may stand mute and lose his opportunity; or he may cast aside his hard retained scruples and, paradoxically, commit what he regards as perjury to prove his worthiness to practice law.

> Men who are honest would prefer to relinquish the opportunity conditioned by this rule ....'

In The Matter Of Mitchell, 249 Ga. 280 (290 SE2d 426) (1982).

In this case, the record substantially shows that O'Neal sincerely and genuinely believed her conduct to be correct given all the relevant circumstances. Her refusal to acknowledge any improper action or to accept personal responsibility for the difficulties she experienced with the other elected Peach County officials is a protected right guaranteed by the Fifth Amendment.

Accordingly, the decision by the court to remove O'Neal from office, which was partially based on her refusal to acknowledge that any specific action taken by her was improper and her refusal to accept personal responsibility for the difficulties she experienced with the other elected officials of Peach County, violated the Fifth Amendment to the U. S. Constitution as applicable to the states through the Fourteenth Amendment.

III. This case raises the issue of adequacy of legal counsel for judges called before judicial disciplinary bodies on charges of misconduct.

A. The Supreme Court of Georgia violated a judge's due process rights in contravention of the Fifth Amendment to the United States Constitution by removing her from office while the hearing record relied upon for the removal determination showed that she was denied adequate legal counsel at the hearing.

This case presents an extremely gross example of inadequate legal representation and ineffective assistance of counsel. The factual background was set forth earlier in this petition.[41] Briefly, O'Neal was notified by her attorney's office on September 26, 1994, that she would need to find substitute counsel to attend the pre-trial conference scheduled for September 27, 1994. She was able to make arrangements with another attorney to attend the conference. The substitute counsel also appeared with O'Neal two days later at the hearing on September 29, 1994.

At the hearing on September 29, 1994, substitute counsel moved for a continuance. He made the following points unequivocally clear, as shown in the record: he was unprepared to proceed; he believed that he could not adequately represent O'Neal; and he thought he would be ineffective. The JQC denied his motion. At that point there were thousands of pages of documents and exhibits, and hundreds of pages of depositions in the case. The record was exceptionally voluminous. Most importantly he knew virtually nothing about the witnesses or his client. He could not cross-examined the prosecution witnesses effectively because he did not have a meaningful opportunity to read the case documents or to discuss the case with O'Neal. For the same reason he could not present an adequate case for the defense.

It was under those very unfair conditions that the JQC hearing record was produced that ultimately the Supreme Court of Georgia used to form their opinion. Thus, O'Neal was removed from office on the basis of a hearing record that is tainted by grossly inaccurate and incomplete information, and misstatements of fact.

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[41] See supra p. 12-13.

Accordingly, O'Neal was denied the most basic notions of fundamental fairness by not being accorded an opportunity to acquire adequate legal representation for the JQC hearing, and thus her Fifth Amendment Rights were violated.

CONCLUSION

The Petition for Writ of Certiorari should be granted for the reasons set out above.

Respectfully Submitted,

Linda O'Neal
Petitioner, pro se
Route 1, Box 478
Fort Valley, Georgia 31030
(912) 825-1678

IN THE SUPREME COURT OF GEORGIA
Decided March 17, 1995

INQUIRY CONCERNING

A JUDGE # 94-70

PER CURIAM.

Following an investigation and formal hearing, the Judicial Qualifications Commission ("JQC") recommended that respondent Judge Linda O'Neal, Chief Magistrate of Peach County, be removed from office. We accept the recommendation.

The JQC received fifteen complaints regarding the conduct of Judge O'Neal. The JQC investigated the complaints and issued a Notice of Formal Proceedings, which set forth six separate charges.

The evidence before the Commission showed that O'Neal had won a contested election for the office of Chief Magistrate of Peach County, unseating the incumbent of sixteen years. The evidence also showed a pattern of an uncooperative working relationship between O'Neal and the County Board of Commissioners.

The evidence relating to the most serious charges showed that on September 13, 1993, O'Neal issued four separate orders to the sheriff and each of his deputies. Collectively, these orders required the sheriff and his deputies to comply with the provisions of OCGA § 15-10-100 (b), which requires a sheriff to perform the duties of constable if no provision is made for appointment of constables, and

OCGA § 15-10-102, which sets forth the powers and duties of constables.[1] O'Neal sent the orders to Deputy Deese at the Sheriff's Department to serve. When Deese refused to serve the orders, O'Neal issued an order directing the coroner to serve the orders. The coroner responded by a letter that he was unauthorized to serve the orders. O'Neal then issued a Rule Nisi to determine whether Deese should be held in civil contempt and a Rule Nisi for criminal contempt against the coroner. At the civil contempt hearing on September 23, 1994, O'Neal stated she was the plaintiff and called and cross-examined Deese. O'Neal verbally issued the orders to the sheriff's deputies, the majority of whom were in attendance, and stated that Deese was purged of contempt. On September 24, 1994, O'Neal issued an indefinite stay with respect to the coroner's hearing.

Later that same day, at a called meeting, the Board publicly read a letter to O'Neal in which the Board stated,

> We have decided to give you 30 days to see if you can get your act together. If you continue with your present attitude, causing problems and conflict in the county government, we will have no choice but to recind [sic] your salary increase and return you to the original salary granted to you by the previous commissioners.[2]

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[1] The statutorily mandated powers and duties of the sheriff in the absence of an appointed constable are to attend regularly all sessions of magistrate court; to pay promptly money collected to the magistrate court; to execute and return all warrants, summonses, executions, and other processes directed to them by the magistrate court; and to perform such other duties as are required by law. OCGA § 15-10-102.

[2] The present Board had given O'Neal a $10,000 increase, after the previous commissioners had reduced O'Neal's salary $20,000 from that given her predecessor.

Relying upon this statement, O'Neal obtained felony warrants from a magistrate from a distant county, two months after this statement was made, against the members of the Board for intimidation of a court officer in violation of OCGA § 16-10-97. O'Neal held the warrants in her office for approximately a week before having them served. The District Attorney of Houston County was appointed special prosecutor and ultimately dismissed the warrants. Following the dismissal, O'Neal issued a lengthy public statement justifying her actions in seeking the warrants and detailing her disputes with the board of commissioners and the sheriff.

The Judicial Qualifications Commission, following a hearing, issued its findings and recommendations. The Commission found that four charges had been proven by clear and convincing evidence,[3] that such conduct constitutes a violation of Canons 1, 2 (A) and (B), 3B (4) and (7), and 3E (1), and recommended that O'Neal be removed from office.

1. Discipline may be imposed only upon a showing by clear and convincing evidence, JQC Rule 7 (e), that the judge engaged in "willful misconduct in office, willful and persistent failure to perform the duties of a judge, habitual intemperance, or conduct prejudicial to the administration of justice which brings the judicial office into disrepute." JQC Rule 4 (b).[4] We interpret "willful misconduct in office" to mean actions taken in bad faith by the judge acting in her judicial capacity. "Conduct prejudicial to the administration of justice" refers to inappropriate actions taken in good faith

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[3] The JQC found that allegations relating to one charge were arguably within a magistrate's duties and, standing alone, were insufficient to warrant disciplinary action.

[4] A judge may also be removed from office if he or she is laboring under a "disability that seriously interferes with the performance of the judge's duties which is or is likely to become permanent." JQC Rule 4 (b). That provision is not involved in this matter.

by the judge acting in her judicial capacity, but which may appear to be unjudicial and harmful to the public's esteem of the judiciary. Prejudicial conduct may also refer to actions taken in bad faith by a fudge acting outside her judicial capacity. Whether discipline should be imposed and the severity of discipline must be

> determined through a reasonable and reasoned application of the text [of the Code of Judicial Conduct] and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.

Georgia Code of Judicial Conduct, preamble (1994). With these principles in mind, we examine the allegations of misconduct.

2. O'Neal's orders of September 13, 1994, directed the sheriff and his deputies to perform the very duties the law imposes. O'Neal contends that the orders address her concern over a lack of courtroom security, delays by the sheriff in serving warrants and in turning over money collected by the sheriff's department. She characterizes the orders as a "remedial form of notice" to make her court officers aware of their responsibilities. She also contends that such orders are authorized by Ga. Const. of 1983 Art. VI, Sec. I, Par. IV and OCGA § 15-1-3 (4), which provides that every court has the power "to control . . . . the conduct of its officers."

Paragraph four of OCGA § 15-1-3 is a codification of a power inherent in the courts. Lowe v. Taylor, 180 Ga. 654, 658 (180 SE 223) (1935). The inherent power of a court should not be used as a weapon in political power struggles, but it "must be carefully preserved" and "cautiously used."

Grimsley v. Twiggs County, 249 Ga. 632, 634 (1982). Reliance upon a court's "inherent power" is inappropriate and unnecessary where specific remedies exist. See McCorkle v. Judges of Superior Court, 260 Ga. 315, 316 (392 SE2d 707) (1992) ("inherent power is not a sword but a shield").

The appropriate remedy to require the proper performance by an official of a statutorily imposed duty is to seek a writ of mandamus. See Grimsley, 249 Ga. at 632 ("[m]andamus is the proper 'remedy to compel a public officer or a county board to perform a duty imposed by law'"), quoting Mattox v. Board of Education, 148 Ga. 577, 581 (97 SE 532) (1918); OCGA § 9-6-20. Although these orders appear to be in the nature of mandamus, a magistrate court, does not have the power to issue writs of mandamus, Ga. Const. Art. VI, Sec. I, Par. 4, nor was the required notice given or hearing held, OCGA § 9-6-27. O'Neal would have certainly been authorized to file a petition for mandamus in the superior court, but she was not authorized to issue an order requiring the performance of an official duty. See McCorkle, 260 Ga. at 317 n. 4 (Hunt, J., concurring) (remedy for judges of inferior courts for whom county has failed to appropriate necessary funds for operation of court is limited to mandamus in the superior court). We thus find O'Neal exceeded the authority vested in the magistrate court in issuing orders to require court officers to comply with their statutorily imposed duties.

Additionally, a review of the transcript of the hearing on the rule nisi directed toward Deese demonstrates that O'Neal had been become personally embroiled in the matter and, therefore, under Dowdy v. Palmour, 251 Ga. 135, 142 (304 SE2d 52) (1983), another judge was required to hold the contempt hearing. See also Canon 3E (1) ("Judges shall disqualify themselves in any proceeding in which their

impartiality night [sic] reasonably be questioned"). The JQC made the factual finding that O'Neal took these actions in order to intimidate and coerce the sheriff and his deputies. Use of the power of the judicial office to issue orders and to exercise its contempt power in order to intimidate and coerce other elected officials violates Canons 2A, 2B, and 3e (1) and demonstrates wilful [sic] misconduct in office.

3. The statement by the Board of Commissioners that it would reduce her salary was contrary to the express language of OCGA § 15-10-23 (b) (no "magistrate's compensation or supplement shall be decreased during any term of office"). However, obtaining felony warrants for the entire board based upon a clearly unenforceable threat issued in the midst of a political squabble was not an appropriate or judicious response by O'Neal. See Canon 2A (Judges . . . "shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary"). Following the dismissal of the felony warrants, O'Neal issued to a local paper a written public statement in which she detailed the circumstances leading up to her seeking the felony warrants. The statement appears to be an attempt to influence public opinion in her favor and against other Peach County officials, including the sheriff and board of commissioners. Such conduct violates Canons 1, 2A, 2B, and 3B (4) and is prejudicial to the administration of justice and undermines public confidence in the impartial functioning of judicial officers.

4. O'Neal refused to acknowledge that any specific action was improper; nor did O'Neal accept personal responsibility for the difficulties she experienced with the other elected officials of Peach County. We take this refusal into account in determining that O'Neal's acts of wilful [sic] misconduct and prejudicial conduct demonstrate she is

presently unfit to hold judicial office.[5] Therefore, we order that Judge Linda O'Neal, Chief Magistrate of Peach County, be removed from office.

Removal from office.

All the Justices concur, except Hunt, C.J., not participating, and Benham, P.J., who concurs in part and dissents in part.

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[5] After a review of the entire record, we find that the remaining charges have not been proven by clear and convincing evidence or that they are cumulative; therefore, they form no independent basis for our decision.

BENHAM, Presiding Justice, dissenting.

While I agree with Divisions 1 and 2 of this court's opinion, I cannot agree with Divisions 3 and 4; therefore, I must respectfully dissent.

The drastic action of removing a judge from office is one that should be taken with great caution and concern. When a judge has been elected by the people, removal from office is tantamount to impeachment; therefore, the violations of the Code of Judicial Conduct should be proven by "clearn and convincing" evidence. Divisions 1 and 2 of the majority opinion clearly show a violation of the Code of Judicial Conduct and I concur in those determinations. However, my concurrence dissolves upon reaching Divisions 3 and 4 of the majority opinion. In Division 3, the majority states:

> The statement [an account by the judge in the local newspaper of what transpired and her motivations for taking the actions she took] appears to be an attempt to influence public opinion in her favor and against other Peach County officials, including the sheriff and board of commissioners. Such conduct violates Canons 1, 2A, 2B, and 3B(4) and is prejudicial to the administration of justice and undermines public confidence in the impartial functioning of judicial officers.

Judges do not lose their right to freedom of expression when they take the bench. In fact, public officials - including judges - are often times called upon to explain their conduct in public forums. Our democrataic society is basedon a free

flow of information and ideas and we have jealously guarded this right for as long as the republic has existed. Donning a robe does not strip a judge of freedom of expression.

The majority opinion does not state how the statement by the judge in the local paper violated the Code of Judicial Conduct or undermined public confidence in the office. Judges are accountable to the public and they should not be unduly punished for explaining their actions to the public. In the absence of a showing that the statement by the judge violated a specific provision of the Code of Judicial Conduct, I must disagree with the majority's determination as to Division 3.

In Division 4 of its opinion, the majority apparently finds evidence of aggravation and states:

> O'Neal refused to acknowledge that any specific action was improper; nor did O'Neal accept personal responsibility for the difficulties she experienced with the other elected officials of Peach County. We take this refusal into account in determining that O'Neal's acts of wilful misconduct and prejudicial conduct demonstrate she is presently unfit to hold judicial office.

This statement is a slim reed indeed upon which removal from office is justified. We must keep in mind that, while the actions taken by the judge were unauthorized, she sought to have done nothing more than was provided for under law.[6] Therefore, I disagree with the majority's determination in

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[6] The judge sought to have the sheriff attend the sessions of court and to prevent the Board of Commissioners from reducing her statutorily-mandated salary.

Division 4 that refusal to admit fault is justification for removal from office.

The decision of the court follows the recommendation of the Judicial Qualifications Commission; however, noticeably absent - though I recognize it is not required by the rules governing the JQC - is a finding by the JQC as to why some lesser punishment is not applicable. In the five years I have served on the Supreme Court of Georgia, this court has never seen fit to remove a judge from office. Instead of ordering this judge from office, I would remand the case to the JQC for a finding as to why lesser punishment is not appropriate.

BEFORE THE COMMISSION
ON JUDICIAL QUALIFICATIONS

INQUIRY CONCERNING A JUDGE #94-70
JUDGE LINDA O'NEAL DOCKET NO. 94-70

FINDINGS AND RECOMMENDATIONS OF THE COMMISSION

A.

STATEMENT OF THE CASE

This matter originated in December 1993 when news articles appeared in The Ledger-Tribune (Peach County), The Macon Telegraph and The Atlanta Journal-Constitution publicizing the arrest of all five (5) members of the Peach County Commission pursuant to a felony warrant requested by Linda O'Neal, the Chief Magistrate of Peach County, Georgia (hereinafter "Respondent") and issued by J. Kendall Jordan, the Chief Magistrate of Hart County, Georgia. [R. 1-6].

Almost immediately after the publication of such articles, the Commission received a total of fifteen (15) complaints from citizens of Peach County expressing concern, and in some instances outrage, over the conduct of the Respondent. [R. 7-26].

As more fully shown in said complaints, these citizens characterized Respondent and/or her conduct as "overstepping her boundaries; an insult to the county;

disturbing; an embarrassment to the community; an attempt to intimidate and bulldoze other county officials; out of control; lost touch with reality; stumbling from one controversy to another; negative publicity harmful to the county; deeply concerned and outraged; and conduct very inappropriate to her office."

By letter dated January 25, 1994, Charles Bartlett, Chairman of the Peach County Commission, advised the Commission of a series of continuing problems between Respondent and various county officials during Respondent's first year in office and expressed the opinion that the Judge had clearly abused the powers of her office; been an embarrassment to the people of Peach County; and could not be effective in her position over the remaining term of her office. [R. 29-43].

By letter dated January 10, 1994, the Commission provided copies of the thirteen (13) complaints received as of that date to Respondent and instructed her to meet with the Commission on Friday, January 28, 1994. [R. 27-28]. Copies of the Bartlett letter and additional complaint were subsequently provided to Respondent. Respondent met with the Commission as directed; denied the allegations made against her, both orally and in writing; and stated unequivocally that she had at all times adhered to the highest standards of judicial conduct. [R. 44-45].

Following this conference and by letter dated January 31, 1994, Respondent was notified that the Commission had voted to investigate the complaints filed against her and advised of her rights under Commission Rule 4. [R. 46-47]. By letter dated February 11, 1994, Respondent adopted and incorporated by reference her letter of January 28, 1994 and

again denied any willful misconduct in office or any conduct prejudicial to the administration of justice which brings the judicial office into disrepute. [R. 48].

Upon completion of its investigation, the Commission determined that Formal Proceedings should be instituted and a Notice of Formal Proceedings was mailed to Respondent by certified mail on March 31, 1994. [R. 49-53].

By letter dated April 11, 1994, the Commission transmitted to Respondent all materials required by Rule 8(a). [R. 54].

On or about May 4, 1994, Respondent's Answer to the Notice of Formal Proceedings generally denying all allegations was timely filed. [R. 55-65]. Although this answer contained numerous special defenses, no ruling was sought and none was made respecting the same, and the matter was subsequently heard by the full Commission on its merits[7].

A pre-hearing conference was scheduled for September 27, 1994 by Judge Hugh Lawson, the judicial Commission member designated by the Chair to preside in this matter. A transcript of said conference is included in the record being transmitted to the Clerk of this court simultaneously with this pleading. [R. 66-81].

Immediately prior to the scheduled pre-trial conference, Respondent filed in this Court an emergency

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[7] Pursuant to the provision of Rule 1(d), Judge Robert B. Struble, a former judicial member of the Commission, was appointed to serve in lieu of Judge Alice D. Bonner, who voluntarily recused due to a prior partnership with counsel for the Commission.

motion for a continuance of the scheduled pre-trial conference, as well as the Formal Hearing then scheduled to begin on September 29, 1994. [R. 82-87]. This Motion was opposed by the Commission [R. 88-117], and by order dated September 26, 1994, such Motion was denied without opinion. [R. 118].

At the outset of the Formal Hearing, Respondent's Motion to Recuse [R. 119-123] and her oral motion for continuance were denied. [FHT 1-18]. The complete transcript (445 pages), together with some 168 exhibits and 6 Defendant's exhibits received in evidence, is also included in the record being transmitted to the Clerk of this Court simultaneously with this pleading. To avoid confusion, this Formal Hearing transcript will hereinafter be cited as [FHT p. _____].[8]

B.

SUMMARY OF THE EVIDENCE

At the Formal Hearing, Commission Counsel presented five (5) live witnesses; five (5) witnesses by deposition; and introduced 168 exhibits. Respondent was her only witness and introduced only six (6) exhibits [unnumbered "Defendant's exhibits."] The evidence thus presented can be summarized as follows:

Respondent, a non-lawyer, who ran for office on a political platform against government corruption and in favor of change [Closing Statement of Respondent, p. 2] and who

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[8] Prior to the hearing, depositions were taken and original transcripts of those introduced into evidence are likewise being transmitted to the Clerk of this Court simultaneously with this pleading.

apparently has no understanding of the proper role and function of a judge, has been at war, both privately and publicly, with almost every other elected official in Peach County, Georgia, virtually since the day she took office in January 1993. This longstanding battle was initially conducted through correspondence in which Respondent made repeated and almost continuous demands on various County officials. [Ex. 1-70]. The battle became more intense in September 1993 when Respondent issued a set of four (4) identical orders to each and every employee of the Sheriff's Department of Peach County, Georgia (some 56 in number), regardless of the position held by such employees. [FHT 190; Ex. 71]. The issuance of such orders appears to be beyond the power and authority of a magistrate (O.C.G.A. § 15-10-2), but in any event, there is absolutely no evidence in this record that the Sheriff's Department had ever refused to serve and/or deliberately delayed the service of any papers issuing from the Magistrate Court. Obviously, the Sheriff's Department has other duties to perform and is not required to be available to the Magistrate Court at the whim of the Magistrate. In fact, the uncontradicted testimony of the Sheriff is that he did not have adequate staff and that often the persons on whom warrants were to be served were not able to be located. [FHT 17, 170-174]. Under these circumstances, the Commission is compelled to conclude that the issuance of these orders was nothing more than an intentional misuse of judicial power in a blatant attempt to intimidate and/or coerce the duly elected Sheriff of Peach County, as well as every secretary, clerk, radio dispatcher, and deputy in the Sheriff's Department.

In addition, and as further evidence of this blatant misuse and abuse of the power of her office, when said orders were not served promptly enough to satisfy Respondent, she

issued a Rule Nisi to the Chief Deputy Sheriff for civil contempt. [FHT, p.191; Ex. 74]. This was followed by an order to the County Coroner to serve the Sheriff [Ex. 81], and when the Coroner, after seeking legal advice, responded that he lacked authority to serve the orders, he was issued a Rule Nisi for Direct Criminal Contempt. [Ex. 75, 80 and 166].

The transcript of the Rule Nisi hearing for the Chief Deputy Sheriff reveals the real motivation for the Respondent's actions in this instance. Among other things, she wrongfully denied a motion to recuse filed by counsel for the accused; acted as both prosecutor and judge; and completely failed to follow the procedures outlined by this Court in Dowdy v. Palmour, 251 Ga. 135, in order to meet due process requirements. In addition, she made no finding of contempt, but declared that the accused had purged himself of contempt after each employee of the Sheriff's Department who was present in court stated his/her name on the record. However, no written order has ever been entered in this matter. [Ex. 167; FHT 194].

The contempt hearing for the Coroner was continued indefinitely after a conference between counsel for the Coroner and the Respondent. No order of any kind was ever entered, and so far as appears, this citation is still a pending matter. [Ex. 86; FHT 86, 143].

The scenario of events surrounding the issuance of these orders is best understood by reviewing the various documents evidencing the actions taken by the Respondent during the period September 13-22, 1993. [Ex. 71-81]. On September 13, 1993, the ex parte orders were issued [Ex. 71]; on September 20, 1993, Respondent's request for a salary increase was denied [Ex. 72, 73]; on September 20, 1993

contempt citations were issued which, among other things, provided; "Said accused contemner may bring legal counsel to such hearing if desired" [Ex. 74]; and when both the Chief Deputy Sheriff and the Coroner refused to serve the ex parte orders, Respondent appointed her clerk to serve the Chief Deputy [Ex. 82] and another individual, Brooks Livingston, to serve the Sheriff [Ex. 79]. The so-called contempt hearing for the Chief Deputy followed [Ex. 167]; the scheduled contempt hearing for Coroner Poole was continued; and Respondent refused a request by the County Commissioners to meet with them to discuss "the office of Magistrate Judge." [Ex. 83, 84].

This bizarre series of events was followed by the County Commissioners mailing the Respondent a copy of a statement read at the Commission meeting which she refused to attend [Ex. 85], and Respondent's rather curt reply in which she characterized the statement as "diatribe." [Ex. 81]. It should be noted that nowhere in this reply or elsewhere in this record is there any mention of the alleged "threat" which subsequently gave rise to the felony warrants Respondent obtained against all five (5) County Commissioners in December 1993 for an alleged violation of O.C.G.A. § 16-10-97. It should also be noted that, for whatever reason, from and after the September 27, 1993 letter, Respondent always signed her correspondence over the title "The Honorable Linda O'Neal." [Ex. 87 forward].

Respondent's long running battle with the County Commission continued unabated. After successfully getting the Commission to designate the September 24, 1993 statement as "official action" and without further discussion with the Commission, Respondent, by letter dated November 15, 1993, forwarded a copy of the September 24, 1993

statement to the District Attorney of the Macon Judicial Circuit and requested that the matter be presented to the Peach County Grand Jury. [Ex. 101]. Because the District Attorney did not act on this request with the promptness which Respondent felt was appropriate under the circumstances, she concluded, "I was being stonewalled." [FHT 356]. Respondent testifies she thereafter consulted a Judge Hughes in Twiggs County; Danny Porter, the District Attorney in Gwinnett County; a Judge Judy Cooper from Clay County; Judge Wayne Purdom; and some unnamed individua in the Attorney General's Office concerning the possibility of issuing warrants against the Commissioners, and while each felt her actions to be justified, nevertheless, all refused to issue the requested warrants. [FHT 357-364].[9]

Apparently determined to find some judicial officer who would issue felony warrants against the five (5) individuals constituting the governing authority of Peach County based solely upon the statement of September 24, 1993, Respondent, without consulting any other judicial officer in the entire Macon Judicial Circuit, telephoned Magistrate Kendall Jordan in Hartwell, Hart County, Georgia, whom she describes as "a neutral, detached magistrate" she had met at a seminar in Athens in August or September of 1993 [FHT 359-361].[10]

[9] Although Respondent's counsel states in his post-trial memorandum that "Judge O'Neal is a product of business where you are taught to put everything in writing to document issues and request" (Closing Statement of Respondent, p.6) and although the record is replete with letters documenting practically every action taken by Respondent, including writing some twelve (12) different letters to various county officers on the same day (ex. 55-66), there is not one single document in this record which even remotely supports Respondent's uncorroborated testimony concerning the alleged conversations with other judicial officers.

[10] On cross-examination, Respondent admits that one of the reasons she went to Judge Jordan was because he had previously discussed with her similar

After faxing her affidavit to Judge Jordan and being advised that he would issue the requested warrants, Respondent personally typed the warrants in her office in Peach County; assigned numbers to each warrant; drove to Hartwell, Georgia; had the warrants signed by Judge Jordan; brought the signed warrants back to her office where they remained unsealed and undocketed until she personally delivered them to the Sheriff for execution approximately one (1) week later [FHT 363, 395-397, 433-437];[11] and subsequently sought reimbursement from the County for her mileage to Hartwell claiming it was incurred in the performance of official duties. [Ex. 164; FHT 406].

At approximately 9:00 A.M. on the morning of December 28, 1993, Respondent personally delivered the signed warrants to the Sheriff of Peach County. Within fifteen (15) minutes after the warrants were delivered, the Sheriff's office began receiving calls from news media all over Georgia, and the individual County Commissioners received similar calls even before being told they were being arrested. [FHT 82-83; 208-209; 243-244; 247].

The Commissioners were subsequently booked and fingerprinted, but after an investigation by the District Attorney of Houston County, specially appointed to investigate the charges, all charges were dismissed. [FHT 83-84].[12] Immediately following this dismissal, Respondent

problems he had experienced with government officials. (FHT 394). "Other Judges are more likely to grant a favor requested by another Judge." In Re Inquiry Relating to Alvord, 847 P.2d 1310 (Kans.1993).

[11] In answer to a question from Commission Member Blackstock, Respondent conceded that she did not hold other warrants issued from her office in December until after Christmas.

issued a public statement to the Byron Gazette in which she stated her disagreement with the decision and again sought to justify her actions in her long running battle with the County Commission. [Ex. 125; FHT 406].

To say that the activities detailed above generated publicity may well be the understatement of the day. One need only examine the news articles in this record [R. 1-6; Ex. 160] and the complaints filed with the Commission [R. 7-26] to observe the public ridicule, embarrassment and disgust to which such conduct exposed not only the Magistrate Court of Peach County, but the entire judicial system of this State.

The final shot in Respondent's all-out war against the County Commission occurred only three (3) days prior to the commencement of the Formal Hearing. At that time, Respondent filed a civil lawsuit against the Commissioners, and other county officials, in the Superior Court of Peach County, Georgia, which contains 292 numbered paragraphs and 61 typewritten pages and which generally seeks to rehash many, if not all, of the issues giving rise to this proceeding. [Ex. 168].

As thus viewed, the personal animosity and political motivation which obviously prompted a judicial officer to conduct herself in such a disgusting and demeaning manner literally leap from the pages of this record. However, if further evidence is needed, it can best be seen in Respondent's conversation of October 1, 1993 with County

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[12] The only reported case construing this provision involves physical threats related to judicial decision making and does not appear to relate to a judge's communications c' interpersonal relations with other elected county officials or their employees. Moon v. State, 199 Ga. App. 94, 404 S.E. 2d 273 (1991).

Commissioner Jack Taylor. When asked by Commissioner Taylor why she had reduced the amount previously charged for serving warrants, Respondent replied with a gesture:

> ... because you and Charles Bartlett stuck your nose into something that didn't concern you ... this issue is between me and the Sheriff. [FHT 241-243].

Commissioner Taylor reported this conversation to Chairman Bartlett by letter dated October 4, 1993 (Ex. 90), and although Respondent denies the statement attributed to her by Commissioner Taylor, the Commission finds the testimony of Commissioner Taylor and the subsequent documentation most persuasive.

In sum, the totality of the evidence reveals a judicial officer bent on retaliation against the governing authorities of the County in which she served and determined to have her way irrespective of the disrespect and disgrace her actions were certain to and did, in fact, bring the judicial office which she held.

Perhaps no better evidence of this all-powerful, all-knowing and vindictive attitude can be found than Respondent's own words. In letters written to the Chairman of the County Commission on August 23 and August 25, 1993, she said:

> ... I will not tolerate or allow myself with respect to my duties and responsibilities to be frustrated, impeded or inconvenienced by subordinate county personnel .... This pattern of conduct must cease immediately .... [Ex. 61, 67].

Most telling, however, are the responses given by Respondent to a series of questions from members of this Commission at the close of her testimony [FHT 410-441][13], and her response to a question posed by Judge Lawson:

> Q. Looking back over the history of your tenure as magistrate of Peach County, all that has been said here about disputes that you had with the sheriff, County Commissioners, the coroner, whomever else you may have disputed with, today at this point before the Commission, do you see anything you would have done differently now in reflecting?
>
> A. That I would have done anything differently?
>
> Q. Yes, Ma'am. In your judgment today, were all of your actions justified? Do you think you acted properly? I don't mean legally, I am talking about as a matter of judgment, in your judgment today, do you feel that ... the way you handled all these problems was the right way to do it, do you feel that way today?
>
> A. Yes, sir. [FHT 392, 393].

C.

FINDINGS

Using the Notice of Formal Proceedings as an outline [R. 49-53], and after considering all the evidence and

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[13] For the sake of brevity, this testimony is not quoted, but this Court is respectfully urged to give particular attention to the cited portion of the transcript.

arguments of counsel, this Commission makes and enters the following Findings:

1.

Charge I and each and every subparagraph thereof has been proved by clear and convincing evidence. [R. 50-52].

2.

Although the charge delineated in Charge II has been proven by clean and convincing evidence, Respondent's conduct in this instance was arguably within the duties of a magistrate to assist persons desiring to file a claim and standing alone is insufficient to warrant disciplinary action. [R. 52].

3.

Charges III, IV and V have been proven by clean and convincing evidence. [R. 52-53].

4.

With respect to Charge VI [R. 53], the conduct proven constitutes a clear violation of the Code of Judicial Conduct and the following Canons in particular:

(A) Canon 1 provides:

> ... Judges shall participate in establishing, maintaining and enforcing high standards of conduct and shall personally observe such standards of conduct so that

> the integrity and independence of the judiciary may be preserved.

This Canon is a universal exhortation to every judge to conduct himself or herself in such a manner as to maintain and preserve the integrity of the Court on which such judge sits.

This Respondent failed in this responsibility.

(B) Canon 2A provides:

> Judges shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

(C) Canon 2B provides:

> Judges shall not allow their family, social, political or other relationships to influence their judicial conduct ... (and) shall not lend the prestige of judicial office to advance the private interest of the judge .... (Emphasis added).

A judge misuses judicial power when he or she enters an order based not on the merits but in retaliation against someone. In Re Lowrey (Texas Special Court of Review, June 12, 1991).

This Respondent failed in these responsibilities.

D. Canon 3B(4) provides:

> Judges shall be patient, dignified and courteous to ... others with whom they deal in their official capacity.

This respondent failed in these responsibilities.

E. Canon 3B(7) provides:

> Judges shall not initiate or consider ex parte communications, or consider other communications made to them outside the presence of the parties concerning a pending or impending proceeding, except that ....

This Respondent failed in these responsibilities.

F. Canon 3E(1) provides:

> Judges shall disqualify ... in any proceeding in which their impartiality might reasonably be questioned, including instances where
>
> > (a) the judge has a personal bias or prejudice against ... a party; ...
> >
> > (c)(i) is a party to the proceeding; or (c)(ii) is acting as a lawyer in the proceeding.

This Respondent failed in these responsibilities.

5.

The conduct here proven, as well as applicable authorities, demands sanctions of the most severe nature.

D.

RECOMMENDATIONS

Commission Rule 14, as promulgated by this Court, authorizes sanctions ranging from a private reprimand to removal from office. This Commission views its responsibility in this regard as perhaps its most serious function and would never recommend the extreme sanction of removal from office except in a case where the evidence is both clear and convincing. As noted by the Supreme Court of Florida in In re Kelly, 238 So 2nd 565, 569 (Fla. 1970), Cert. Denied, 401 U.S. 692 (1971), the object of these disciplinary proceedings is not to inflict punishment, but to determine whether one who exercises judicial power is unfit to hold a judgeship.

Measured by this standard, it is the unanimous opinion of this Commission that the cumulative effect of Respondent's demonstrated lack of understanding of the role of the judiciary; her obvious lack of judicial temperament; and her intentional misuse of judicial powers to advance her own private interests render he unfit to hold a judgeship.

As so aptly noted by the Florida Supreme Court in In re Graham, 620 So. 2d 1273, 1277 (Fla. 1993), "a judgeship is a position of trust, not a fiefdom." Based upon Respondent's appearances before this Commission and her obvious lack of understanding of the serious offenses involved in this proceeding, this Respondent is not likely to ever understand the difference. Accordingly, she is unfit to hold judicial office and should be removed.

Additional language from the Graham decision is persuasive and controlling:

> A judge who refuses to recognize his own transgressions does not deserve the authority or command the respect necessary to judge the transgressions of others. We are troubled by the fact that [the judge] shows no remorse and we can only presume that if this Court reprimanded him, he would continue to violate the precepts of the Code of Judicial Conduct. See: In re Trettis, 577 So. 2d 1312 (Fla. 1991) (When a Judge continuously acts in a manner that undermines public confidence, removal may be required.)

Id at 1276.

CONCLUSION

> Standing alone, each individual charge against [the judge] might not warrant the extreme disciplinary measure of removal. conduct unbecoming a member of the judiciary may be proved by evidence of specific major incidents which indicate such conduct, or it may also be proved by evidence of an accumulation of small and ostensibly innocuous incidents which, when considered together, emerge as a pattern of hostile conduct unbecoming a member of the judiciary. Graham at 1275, quoting In Re Kelly, supra.

In the instant case, Respondent's proven conduct was motivated by personal bias and animosity; was willful, deliberate and intentional; and can only be described as a

flagrant abuse and/or misuse of the power and prestige of judicial office to intimidate and coerce other duly elected constitutional officers to comply with Respondent's every whim, wish and desire.

Such conduct cannot be condoned and the totality of the circumstances brings the judicial office into disrepute. Accordingly, this Commission recommends the extreme sanction of removal from office.

This 9th day of December, 1994.

JUDICIAL QUALIFICATIONS COMMISSION
/s/
John E. James, Chair
/s/
Jerry B. Blackstock
/s/
Dr. Barbara Carter
/s/
Charles A. Harris
/s/
Judge Hugh Lawson
/s/
Bob Reinhardt
/s/
Judge Robert B. Struble
/s/
(Sitting by Designation)

SUPREME COURT OF GEORGIA

Case No. S95A0967 Atlanta, March 30, 1995

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

INQUIRY CONCERNING A JUDGE #94-70

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

All the Justices concur, except Hunt, C.J., not participating, and Benham, P.J., dissents.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/
Sherie M. Welch, Clerk

IN THE SUPREME COURT
STATE OF GEORGIA

IN RE INQUIRY CONCERNING A JUDGE #94-70
JUDGE LINDA O'NEAL

MOTION FOR RECONSIDERATION OF JUDGMENT

Comes now, the movant, Linda O'Neal, Chief Magistrate Judge of Peach County, Georgia, by and through her attorney, Bruce S. Harvey, and files this motion pursuant to Supreme Court Rule 47 and requests this Court to reconsider its Judgment, which ordered that Judge Linda O'Neal be removed from office, and files said motion on the following grounds:

1. O'Neal did not issue orders to officials of another branch of government when she issued orders to her constables, the sheriff and his deputies, because constables are part of the judicial branch and subject to the authority of a magistrate judge.

2. O'Neal did not obtain felony warrants for the entire board of commissioners based upon "a clearly unenforceable threat," as proven by the fact that the board has carried out the threat and reduced her salary.

3. O'Neal was never charged with intimidating and coercing the sheriff and his deputies, and a finding by the JQC that such occurred absent an opportunity to present a

defense against said charge, violates O'Neal's due process rights.

4. Canons 2A, 3B(2), 3C(2), and 3E(1) required or authorized the actions taken by O'Neal.

5. There is no "clear and convincing" evidence supported by the record which shows that the administration of justice was, in fact, prejudiced or that the public's confidence was undermined as to the impartial functioning of judicial officers as a result of O'Neal's public statement.

6. O'Neal's First Amendment rights shields her from disciplinary sanctions for making a public statement.

7. The decision to remove O'Neal from office which is partially based on her refusal to acknowledge that any specific action was improper or her refusal to accept personal responsibility for the difficulties she experienced with the other elected officials of Peach County, is contrary to prior decisions of this Court and other courts, and violates the Fifth Amendment to the U. S. Constitution as applicable to the states through the Fourteenth Amendment.

8. The will of the people in electing O'Neal and their right to recall should not be abrogated without "clear and convincing evidence" that she "intentionally committed serious and grievous wrongs of a clearly unredeeming nature."

9. It is fundamentally unfair to punish O'Neal by removal from office in light of the facts of record, as they provide sufficient reason to seriously question the due

process accorded O'Neal at the JQC hearing and the adequacy of the resulting evidentiary record.

10. O'Neal's due process rights as guaranteed by the Fifth Amendment to the U.S. Constitution as applicable to the states through the Fourteenth Amendment were violated by the procedures accorded her by the JQC.

11. O'Neal's counsel was deprived adequate time in which to prepare a defense in violation of her due process rights.

12. There is a clearly noticeable and substantial disparity, in relation to the alleged misconduct, between the Supreme Court decisions in other cases and this Court's decision in regard to O'Neal; and the record does not support that O'Neal committed any misconduct of a nature or degree as reflected in these other cases in which the judge was removed from office.

13. The decision to remove O'Neal from office is an unusually harsh judgment when compared to the punishment rendered in other Supreme Court JQC case decisions involving more serious allegations of misconduct.

14. O'Neal, as the record demonstrates, has not engaged in a pattern of improper activity.

15. There is no "clear and convincing" evidence as shown by the record of any harmful effects occurring as a result of the alleged misconduct.

16. O'Neal, as demonstrated by the record and the brief in support of this motion, had a rational legal basis and a justifiable belief for the actions she has taken while in office.

17. As shown by the record, the petition filed in this Court, and the brief in support of this motion, O'Neal has not committed any serious transgressions which would warrant removal from office.

WHEREFORE, movant moves the Court for an order setting aside said judgment.

This the 27th day of March, 1995.

Respectfully submitted,

/s/
Pete C. Whitlock
Georgia Bar No. 756235
Attorney for Movant

Bruce S. Harvey
Georgia Bar No. 335175
Attorney For Movant

37IN THE SUPREME COURT
STATE OF GEORGIA

IN RE INQUIRY CONCERNING A JUDGE #94-70
JUDGE LINDA O'NEAL

BRIEF IN SUPPORT OF MOTION FOR RECONSIDERATION

Judge Linda O'Neal respectfully requests this Court in light of the following presented facts and arguments to reconsider its Order that she be removed from office. As Justice Benham so aptly pointed out in his dissent, "the drastic action of removing a judge from office is one that should be taken with great caution and concern." "Judges should not be subjected to the extreme discipline of removal except in instances where it is free from doubt that they intentionally committed serious and grievous wrongs of a clearly unredeeming nature." In re La Motte, 341 So. 2d 513, 517-18 (Fla. 1977). As will be shown O'Neal never engaged in conduct that would warrant the extreme discipline of removal from office. This Court, in its opinion, stated that it would examine the allegations of misconduct with the following principles in mind:

> "Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there

> is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system."

Georgia Code of Judicial Conduct, Preamble (1994).

These same principles will also be considered in the arguments to be presented. It is further stated in the Preamble of the Code of Judicial Conduct that

> "The Canons and Sections are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decisional law, as well as in the context of all relevant circumstances." (Emphasis added).

These principles will likewise be included in the arguments presented.

1. The Court's opinion with respect to O'Neal's orders of September 13, 1994, directed to the sheriff and his lawful deputies now provides the guidance that heretofore was lacking in Georgia's case law. While the cases as cited by the Court indicate mandamus is the remedy to be used to require an official to properly perform his statutory duties, other cases fairly indicate that a court "is vested with the inherent power necessary to the administration of justice and 'with all necessary authority to efficiently and completely discharge those duties'." Fathers Are Parents Too, Inc. v. Hunstein, 202 Ga. App. 716 (415 SE2d 322) (1991), quoting Wallace v. Wallace, 225 Ga. 102, 111 (166 SE2d 718) (1969). This Court has also stated that inherent power "includes the authority to perform any function reasonably necessary to effectuate [the Court's] jurisdiction" and "improve the administration of justice." In The Matter of Teresa S. Oliver, 261 Ga. 850 (413 SE2d 435) (1992), quoting Wallace, supra.

Further, in McCorkle v. Judges of Superior Court, 260 Ga. 315, 316 (392 SE2d 707) (1992) this passage appears:

> In Grimsley v. Twiggs County, 249 Ga. 632, (1982), we acknowledged that the judiciary, as an independent and co-equal branch of government, must possess power that is concomitant with its duty to the public. See also Miree v. United States, 242 Ga. 126, 132 (249 SE2d 573) (1978) ("Our powers are equal to our duties.").

Additionally, when this Court referred to McCorkle, supra, it noted the following statement in that decision, "inherent power is not a sword but a shield." Also, in McCorkle this Court stated, "... [I]nherent power does not give the judicial branch the right to invade the province of another branch of government. As a principle flowing from the separation of powers doctrine, it arms the judicial branch with authority to prevent another branch from invading its province." McCorkle at 316. This language brings up a very interesting legal twist to the situation that O'Neal faced. To O'Neal and the Magistrate Court, the sheriff and his deputies were constables, as noted by O.C.G.A. 15-10-3(b)(3)(c) ("In the case of a ... sheriff or sheriff's deputy serving as constable"); O.C.G.A. 15-10-27(c) (In any county subject to this code section ... the sheriff and deputies of civil court shall serve as constables of magistrate court.); and O.C.G.A. 15-10-100(b) ("If no provision is made for the appointment of constables, the sheriff and his deputies shall perform the duties of constables."). Constables are created within the law governing Magistrate Courts and are officers within the judicial branch, and are not officers within the executive branch to which the sheriff and his deputies otherwise

belong. O.C.G.A. 15-10-100(a) provides that, ... "the county governing authority may provide for the appointment of constables by the chief magistrate. Constables so appointed shall serve at the pleasure of the chief magistrate...." With regard to their power of arrest the law states: "Constables shall exercise the power of arrest only with a warrant or at the direction of and in the presence of a magistrate or the judge of another court." O.C.G.A. 15-10-103. Clearly, constables are officers of the magistrate court subject to the direction and control of a judge. Even the language which sets forth their powers and duties suggest that they are subject to the direction and control of the judge of the magistrate court. O.C.G.A. 15-10-102. Thus, there is a rational basis for O'Neal to have believed that when she issued orders to the sheriff and his deputies that she was not invading another branch of government but was issuing orders to court officers within the judicial branch of government and, therefore, was not exceeding the principles with respect to inherent power as set fort in Grimsley v. Twiggs County, 249 Ga. 632 (1982) and McCorkle, supra. See O'Neal's testimony at [FHT p. 332:14]. Accordingly, pursuant to this analysis O'Neal could not be guilty of using the Court's inherent power in a power struggle between the branches, because the sheriff and his deputies by operation of law wears two (2) hats: one within the executive and one within the judiciary branch of government. Notably, O'Neal's orders to the sheriff and his deputies only included the duties that they were to perform while they were functioning within the judicial branch as constables. If this argument is considered to be valid then Canon 3C(2) of the Code of Judicial Conduct also applies, which states that

> "Judges shall require* their staffs, court officials and others subject to their direction

> and control to observe the standards of fidelity and diligence that apply to the judges and to refrain from manifesting bias or prejudice in the performance of their official duties." (Emphasis added).

O'Neal's orders issued to the Magistrate Court's constables, the sheriff and his deputies, who are "court officials" or "others subject to [her] direction and control" simply required diligence in the performance of their constable duties and thus would be within her authority to issue as mandated by the Code of Judicial Conduct. Canon 3C(2).

It is quite understandable how a new judge in office, as in O'Neal's case, could interpret the case law, statutes, and Code of Judicial Conduct referenced above, coupled with Art.. VI, Sec. I, Par. III of the Georgia Constitution of 1983 and O.C.G.A. 15-1-3(4) to mean that orders such as she issued to her constables, the sheriff and his deputies, were within her authority to issue.

There is no evidence in the record that she issued any orders before or after this event which exceeded her authority, so in this regard the record demonstrates no pattern of improper activity. In fact, the record demonstrates that since issuing the orders to the sheriff and his deputies, O'Neal has used the writ of mandamus to require the proper performance by an official of a statutorily imposed duty. See JQC hearing Exhibit 168, dated September 26, 1994. Interestingly, although six months have elapsed, no trial date has been scheduled to hear that case. Deese testified that he never served any of the orders [FHT p. 194, 204], and the evidence in the record indicates no change with respect to the sheriff and his deputies performance of their duties, so based on the record the orders actually had no effect on the sheriff

and his deputies. O'Neal submits that the seriousness of the transgression, being one of mistaking the status of the law, and given the context of all relevant circumstances, is minor. Besides, judges make mistakes as to the status of the law from time to time, but they are not charged with willful misconduct and removed from office because of the mistake.

This Court found that O'Neal should have disqualified herself at Deese's rule nisi hearing. However, O'Neal respectfully requests this Court to consider her reliance upon the commentary to Canon 3E(1), which states in part:

> "The Rule of necessity may override the rule of disqualification. For example, a judge might be ... the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order..."

At the time the hearing was held, O'Neal was the only Magistrate Judge in Peach County to hear the matter. She perceived that the improper performance of constable duties by the sheriff and his deputies was of such a poor degree that immediate attention to the matter was necessary. See [FHT p.330-332, 424]. Therefore, when Deese refused to serve or order another deputy to serve the four (4) orders outlining the constable duties she considered it necessary to take immediate judicial action. As explained in her petition to this Court, she used the rule nisi hearing as a vehicle to give Deese a direct order to serve the four (4) orders. If O'Neal misunderstood the Canon and its commentary in regard to this matter, the sanction for such misunderstanding would appear to be something far less than removal from office.

The record evidences no other instances before or after this one occurrence when it is alleged that O'Neal failed to disqualify herself and circumstances required disqualification. Therefore, there is no pattern of improper activity with regard to this matter. Based on the record there has been no effect on Deese because of O'Neal's failure to disqualify herself. O'Neal respectfully suggests that since Deese was purged of contempt the seriousness of the transgression is minor.

This Court noted the JQC factual finding that O'Neal issued the orders to the sheriff and his deputies, and held the rule nisi hearing on Deese to intimidate and coerce the sheriff and his deputies. O'Neal was never charged with intimidation and coercing or attempting to intimidate and coerce the sheriff and his deputies and thus she was never given an opportunity to defend against that specific accusation, in violation of her due process rights as guaranteed by the Fifth Amendment to the U. S. Constitution as applicable to the states through the Fourteenth Amendment. She respectfully submits to this Court that it is now unfair to use such a finding to determine that she committed willful misconduct in office and thereby violated Canons 2A, 2B, and 3E(1). Notwithstanding this argument, the record contradicts the JQC finding and instead shows that the sheriff and his deputies were not intimidated by the orders and Deese's Rule Nisi Hearing. Deese testified at the JQC hearing that he told the JQC investigator that he thought the problems with the Magistrate Court were minor in nature. [FHT p. 205]. Deese admitted under oath at the JQC hearing, a year after they were issued, that none of the orders had been served [FHT p. 194, 204]; and the documentary exhibits of O'Neal's correspondence and her testimony shows that the

sheriff and his deputies still do not properly perform their duties with respect to the Court.

2. O'Neal did not obtain felony warrants for the entire board of commissioners based upon "a clearly unenforceable threat," as proven by the fact that the board has carried out the threat and reduced her salary. She received a salary increase for the month of November, 1994, which included a supplemental pay increase of $50.46. Her paycheck for the month of December, 1994, disclosed a supplemental pay decrease of $50.46, and such decrease has continued monthly thereafter. O'Neal's affidavit and pay stubs in support of these facts is attached hereto as **Exhibit "A"**. Georgia Law prohibits the reduction of a magistrate's compensation or supplement during any term of office. O.C.G.A. 15-10-23(b). The board decreased O'Neal's salary after the JQC hearing had occurred, the closing arguments had been submitted, and the hearing record was established.

Additionally, O'Neal obtained the felony warrants in reliance upon the mandate of Canon 3B(2) ("Judges shall be faithful to the law" and "shall not be swayed by partisan interests, public clamor, or fear of criticism."). She obtained the warrants on a good faith belief that a crime had been committed, as the record supports. She believed that her personal integrity, oath of office, and respect for the law required her to seek criminal prosecution and that ignoring the commissioners' threat would violate Canon 2A ("Judges shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."). At the time the threat was communicated to O'Neal the record reflects that she was not embroiled in a political squabble with the

commissioners, and that a proper relationship still existed between them.

O'Neal's public statement following the dismissal of the felony warrants was a good faith informative factual statement, as supported by the record. Furthermore, there is not one scintilla of evidence in the record that shows that the administration of justice was, in fact, prejudiced or that the public's confidence was undermined as to the impartial functioning of judicial officers as a result of O'Neal's statement. O'Neal asserts that absent clear and convincing evidence that such harm occurred that her freedom of speech rights as guaranteed by the First Amendment to the U. S. Constitution shields her from disciplinary sanctions for making the public statement. She respectfully further asserts that the right of the public to be informed as to the truthful reasons for her official actions is absolute and must be observed by her because she holds a position of public trust: Thus, her breach of this public trust would violate Canon 2A.

3. The record demonstrates that O'Neal sincerely and genuinely believed her conduct to be correct under all the relevant circumstances. Her refusal to acknowledge any improper action or to not accept personal responsibility for the difficulties she experienced with the other elected Peach County officials is not shown by clear and convincing evidence in the record to be a refusal made in bad faith.

The Supreme Court of Florida has recently expressed the following opinion concerning judges who refuse to admit wrongdoing or refuse to express remorse: "Every judge who believes himself or herself truly innocent of misconduct has a right -- indeed, an obligation -- to express that innocence to

the Commission ..." Inquiry Concerning A Judge No. 93-62, RE: P. Kevin Davey, Supreme Court of Florida (1994).

This Court has also previously made and adopted a statement with respect to denial of guilt and remorsefulness, which in part states:

> Can it be said that one who denies guilt and, therefore, is not remorseful for his wrongdoing has been rehabilitated? The question is best analyzed and answered by the logic of In the Matter of Hiss, Mass. 333 NE2d 429, 437 (1975). 'Simple fairness and fundamental justice demand that the person who believes he is innocent though convicted should not be required to confess guilt to a criminal act he honestly believes he did not commit. For him, a rule requiring admission of guilt and repentance create a cruel quandary: he may stand mute and lose his opportunity; or he may cast aside his hard retained scruples and, paradoxically, commit what he regards as perjury to prove his worthiness to practice law. Men who are honest would prefer to relinquish the opportunity conditioned by this rule ....'

In The Matter Of Mitchell, 249 Ga. 280 (290 SE2d 426) (1982).

Moreover, it is respectfully submitted that the decision to remove O'Neal from office which is partially based on her refusal to acknowledge that any specific action was improper or her refusal to accept personal responsibility for the difficulties she experienced with the other elected officials of Peach County, violates the Fifth Amendment to the U. S. Constitution as applicable to the states through the Fourteenth Amendment.

4. One of the most basic organic rights of the citizens of Peach County was expressed when they unseated a sixteen year incumbent and replaced him with Linda O'Neal. O'Neal respectfully asserts that it is the voters of Peach County who ought to decide her fate in office, just as they recently did with respect to Commissioner Jack Taylor who was a witness and testified at the JQC hearing against O'Neal. Taylor was defeated in all four precincts and on the absentee ballots reportedly by a substantial 168 votes out of a total of 870 votes in a special election held on February 7, 1995. One of the principal issues in that election was the complaint that he participated in and filed against O'Neal with the JQC. Moreover, O'Neal as an elected official is subject to recall by the voters of Peach County. Her removal from office will result in an interim appointed magistrate to fill the office vacancy and that magistrate will not be subject to recall. Therefore, the will of the people in electing O'Neal and their right to recall should not be abrogated without "clear and convincing evidence" that she "intentionally committed serious and grievous wrongs of a clearly unredeeming nature." In re La Motte, supra. The record simply does not support such a finding.

5. At the JQC hearing O'Neal attempted to introduce into evidence indication of positive community support for her as Chief Magistrate Judge of Peach County. Over eighty (80) individuals either wrote letters, signed petitions, or completed favorable court questionnaires, which serve to significantly counter and offset the apparently solicited fifteen complaints filed against O'Neal. Copies of this evidence is attached hereto as **Exhibit "B"**. The JQC refused to allow admission of this evidence on the basis that it had not been presented at the pretrial conference. [FHT p. 386-387]. However, counsel with less than 24 hours notice that he would be responsible for appearing for O'Neal at the pretrial conference on September 27, 1994, was not aware of the above evidence. The quantum of evidence in the case (hundreds of pages of documents and over 450 deposition transcript pages) made it impossible for him to become adequately familiar with all of the evidence in such a short period of time. Counsel advised the JQC on September 29, 1994, at the beginning of the hearing that his short exposure with the case caused him to believe that he would not be able to adequately represent O'Neal. [FHT p. 11-17]. Nonetheless, counsel's request for a continuance was denied and O'Neal was forced to proceed. The JQC offered to continue the hearing if O'Neal would take a leave of absence from her office during the continuance. Such a coercive offer was not acceptable to O'Neal and she declined the offer. Additionally, O'Neal's motion for directed verdict presented at the close of the commission's case in chief was denied by the presiding hearing officer without presenting it before the entire commission in violation of Rule 1(b) of the Rules of the Judicial Qualifications Commission. [FHT p. 289, 296]. Such ruling was a ruling on the merits of the case and by the commission's rules a majority of its membership was required. Accordingly substantive error resulted and denied

O'Neal due process. It is fundamentally unfair to punish O'Neal by removal from office in light of these facts, as they provide sufficient reason to seriously question the due process accorded O'Neal at the JQC hearing and the adequacy of the resulting evidentiary record.

6. In O'Neal's petition objecting to the JQC's Findings and Recommendations and in this brief several issues have been raised that put into question the adequacy of the JQC procedures accorded O'Neal in regard to her Fifth Amendment due process rights as applicable to the state through the Fourteenth Amendment. As this case demonstrates there are gross violations of fundamental notions of due process, which occur as a consequence of the JQC being investigator, prosecutor, and trier of fact of judicial complaints. In support of this contention O'Neal turns to recent developments in the State of Florida. Florida has recently decided that their JQC process, which is similar to Georgia's, is lacking in the area of due process as required by the U. S. Constitution. The Florida Bar Board of Governors, including members of the combined Bench/Bar Commission, have voted unanimously (28 to 0) to bifurcate the JQC. Copies of articles in the Florida Bar News which address this subject is attached hereto as **Exhibit "C"**.

7. A survey of twenty five (25) past JQC cases that reached the Supreme Court was undertaken to compare the Supreme Court decision in each of those cases to the decision this Court has made with respect to O'Neal. A copy of the survey is attached hereto as **Exhibit "D"**. There is a clearly noticeable and substantial disparity, in relation to the alleged misconduct, between the Supreme Court decisions in the other twenty five (25) cases and this Court's decision in regard to O'Neal. The record does not support that O'Neal

committed any misconduct of a nature or degree as reflected in these other cases in which the judge was removed from office. Indeed, the record does not even support that O'Neal committed any misconduct as serious as that reflected in most of the other cases in which the judge was suspended, and in some cases only reprimanded.

8. To further demonstrate the abusive political powers to which O'Neal has been subjected, it should be noted that immediately following the issuance of this Court's decision, the Judges of the Superior Court of the Macon Judicial Circuit issued an ex-parte order authorizing the Board of Commissioners to take possession of all court papers and county property currently located in the office of the Magistrate Court. A copy of said order is attached hereto as **Exhibit "E"**. A strikingly noticeable aspect of the order is that the board of commissioners, a separate branch of government, was being authorized to take possession of judicial property. Additionally, Charles Bartlett, the commission chairman advised William Cooney, deputy court clerk, on Monday, March 20, 1995, that he was being placed on leave and that he had to leave the courthouse. A copy of a letter which was given to Cooney at the time he was placed on leave is attached hereto as **Exhibit "F"**. Further, the county marshal threatened Cooney that if he did not leave the courthouse that he would be arrested for failure to obey a lawful order.

As shown by the record, the petition filed in this Court, and this brief, O'Neal had a rational legal basis and a justifiable belief for the actions she has taken while in office.

Based on the foregoing presented facts and arguments, and in light of the lessor disciplinary action taken in the majority of the other cases shown in **Exhibit "D"**, It is respectfully requested that this Court reconsider its decision to remove Judge Linda O'Neal from office.

This the 27th day of March, 1995.

Respectfully submitted,

/s/
Pete C. Whitlock
Georgia Bar No. 756235
Attorney for Movant

Bruce S. Harvey
Georgia Bar No. 335175
Attorney For Movant

53IN THE SUPREME COURT
STATE OF GEORGIA

IN RE INQUIRY CONCERNING A JUDGE #94-70
JUDGE LINDA O'NEAL

PETITION AND SUPPORTING BRIEF IN OBJECTION
TO
FINDINGS AND RECOMMENDATIONS OF
THE JUDICIAL QUALIFICATIONS COMMISSION

Comes now, the Petitioner, Linda O'Neal, Chief Magistrate Judge of Peach County, Georgia, by and through her attorney, Bruce S. Harvey, and petitions the court to overrule the FINDINGS AND RECOMMENDATIONS of the Judicial Qualifications Commission which has recommended to this court that Petitioner be removed from office, and to dismiss all charges filed against her by said commission, and in support of her petition Petitioner respectfully shows the court the following:

BRIEF IN SUPPORT OF PETITION

I
STATEMENT OF THE CASE

A. Nature Of The Case

This matter - involving disciplinary action to remove Petitioner from her elected judicial office - is a case of gross mischaracterization and misstatement of the facts and is a reckless misrepresentation of truth. Indeed, one of the most

alarming and troubling aspects of the FINDINGS AND RECOMMENDATIONS of the Commission, as the evidence clearly shows, is the gross failure to report a straightforward accounting of the facts as they actually occurred.

Accordingly, the motivations behind this matter are seriously questioned by Petitioner. Careful analytical scrutiny of the evidence will reveal that the verbs, adverbs, and adjectives selected by the author of the Commission's report are so venomous and so grossly overstate Petitioner's conduct that the impartiality of the proceedings must be questioned. Due process calls for a thorough review of the record by this court.

Reportedly, this matter arose upon the receipt by the Commission of a total of fifteen complaints submitted by citizens of Peach County, after news stories publicized that all five County Commissioners were arrested on a felony warrant requested by Petitioner. Subsequent to his arrest, Charles Bartlett, Chairman of the Peach County Board of Commissioners, filed a complaint with the Commission against Petitioner.

B. Course Of Proceedings

Petitioner was first notified of this matter by letter dated January 10, 1994. The Judicial Qualifications Commission instructed her to meet with the Commission on Friday, January 28, 1994.

Petitioner met with the Commission as directed; denied the allegations made against her, both orally and in writing; and stated unequivocally that she had at all times adhered to the highest standards of judicial conduct. [R.44-45].

Following this conference and by letter dated January 31, 1994, Petitioner received notice that the Commission had voted to investigate the complaints filed against her.

Petitioner sent a letter to the Commission, dated February 11, 1994, wherein she adopted and incorporated by reference her letter of January 28, 1994, and again denied any willful misconduct in office or any conduct prejudicial to the administration of justice which might bring the judicial office into disrepute. [R.48].

A Notice of Formal Proceedings was subsequently received by Petitioner, dated March 31, 1994. [R.49-53].

On or about May 4, 1994, Petitioner's Answer to the Notice of Formal Proceedings generally denied all allegations and contained numerous special defenses. [R. 55-65].

A pre-hearing conference was scheduled for September 27, 1994, by Judge Hugh Lawson, the Judicial Commission member designated by the Chair to preside in this matter.

Immediately prior to the scheduled pre-trial conference, Petitioner filed in this Court an emergency motion for a continuance of the scheduled pre-trial conference, as well as the Formal Hearing then scheduled to begin on September 29, 1994. [R. 82-87]. This Motion was opposed by the Commission [R. 88-117], and by order dated September 26, 1994, such Motion was denied without opinion. [R.118].

The matter was subsequently heard by the full Commission on September 29, 1994 and September 30, 1994.

At the outset of the Formal Hearing, Petitioner's Motion to Recuse [R. 119-123] and her oral motion for continuance were denied. [FHT 1-18].

At the conclusion of the Formal hearing, counsel were directed to submit written arguments.

C. Disposition Below

On December 9, 1994, the Commission issued its FINDINGS AND RECOMMENDATIONS and recommended that Petitioner be removed from office.

II
STATEMENT OF FACTS

A. General Statement

From the day before Petitioner took office, when the lame-duck Board of Peach County Commissioners, as punishment, reduced her salary to the statutory minimum of $13,125 per year [FHT p. 129], until the day the newly configured Board of Peach County Commissioners, in violation of both the civil and criminal laws of this State, threatened to rescind the salary increase they had previously granted to her, Petitioner has admirably withstood the onslaught of an inept, lethargic, inefficient and sometime punitive Board of Commissioners in complete control of the power of the purse. Petitioner, unlike probably any other Magistrate in the State of Georgia, has found herself - a duly elected judge by the constituents of Peach County - held economic hostage to the purse strings of the Board of Commissioners; yet bound by the stringent requirements of the Cannons of Judicial Conduct, a Code of Judicial Conduct which she holds in high esteem, interprets literally, and has faithfully followed.

Petitioner was asked by citizens of Peach County to run for office amid allegations of corruption and mismanagement. Once deciding to run for office, Petitioner ran her political campaign on a political platform against government corruption and in favor of change. Petitioner, in

a contested election, unseated a 16-year incumbent, George Harris, who himself had been brought before the Judicial Qualification's Commission amid allegations of fiscal corruption in the Magistrate Court. From her first day in office, Petitioner has found herself in the unenviable position of repeatedly requesting even the most fundamental of supplies to efficiently discharge her administrative responsibilities, including but not limited to, obtaining the return of items looted from the Magistrate Court during the waning days of the prior administration; obtaining the alarm code which would enable her to get into her office on weekends to fulfill her constitutional duties with respect to the presentment of prisoners; obtaining staff support sufficient to conduct the business of the Magistrate Court; obtaining working chairs in which visitors to the Magistrate Court can sit; obtaining pens and pencils, paper, and paper clips; curtains for curtain rods; and obtaining a working air conditioner. As if it were not enough that a sitting judge would have to repeatedly request such information and/or supplies from the powers that controlled the purse, but often these items were never provided to her or were provided months after they were requested. For example, Petitioner, sought return of the items taken from her office by the prior administration in letters dated January 4, 1993, April 19, 1993, May 17, 1993, May 31, 1993, June 2, 1993, and June 14, 1993. [See respectively Ex. 1, 2, 15, 19, 22, 23, 25, 29]. Petitioner sought a break down of the Magistrate Court budget in letters dated May 3, 1993, May 24, 1993, June 14, 1993, July 12, 1993, July 28, 1993, August 23, 1993, and November 8, 1993. [See respectively Ex. 16, 17, 20, 30, 40, 53, 61 and 97]. Petitioner has repeatedly expressed her concern over courthouse security in letters dated June 14, 1993, July 6, 1993, July 24, 1993, and August 23, 1993. [See respectively Ex. 31 (page 2), 39, 50, 59, and 62]. Does harm

to a magistrate or employee have to occur before such money is allocated? Petitioner has repeatedly told members of the County Commission that she needs more employees or larger salaries for her present staff because the prior administration had six (6) employees and she has three (3) performing a larger workload in letters dated June 14, 1993, July 12, 1993, September 3, 1993, November 8, 1993, November 8, 1993, November 12, 1993 (two letters), November 22, 1993, and June 6, 1994. [See Ex. 33, 43, 69, 98, 99, 100, 102, 105, and 131]. Should the County Commissioners be allowed to prevent the Magistrate Court from functioning by refusing to adequately staff the Court? Petitioner has gone so far as to use her own personal computers and personal money to purchase security and necessary supplies precisely because the Commissioners have refused to issue purchase orders for these items. [FHT p. 313; Ex. 3 (page 6), 38, and 60].

B. As Stated The Evidence in Support of the Findings Misrepresents the Truth

As outlined by the Notice of Formal Proceedings the allegations as stated in support of the charges and the evidence used to support the Commission's subsequent findings grossly mischaraterizes and misstates the facts as evidenced by the record. Petitioner's untangling of the allegations and twisted facts will reveal a professionally dutiful, fair, honest, and ethical judge, who is most worthy of the judicial office to which she was elected.

The voluminous record of 168 exhibits assembled by the Commission has been reduced into three (3) easy to review and informative table summaries by Petitioner, and are attached to this Petition and Supporting Brief as Appendices A (Summary of Plaintiff's Exhibits), B (Summary of Plaintiff's Exhibits - Petitioner's

Correspondence With Board of Commissioners), and C (Summary of Plaintiff's Exhibits - Petitioner's Correspondence With Sheriff). These appendices accurately summarize Plaintiff's exhibits by their hearing record exhibit number and provide a quick reference to this otherwise lengthy and burdensome part of the record. Reference to an appendix summary will hereinafter be cited as [Appendix __ (appropriate letter designation)].

(1.) Magistrate Court: The Lack Of Cooperation From Other County Officials

The Commission's declaration that Petitioner has been at war with almost every other elected official in Peach County has put the proverbial cart before the horse and grossly mischaracterized the facts. There would never have been any difficulties with the Sheriff and County Commissioners if they had met only the minimum "literal requirements of the law". Specific treatment of these matters will be more fully discussed below, but generally speaking, Petitioner has been required again and again to cite for the County Commissioners and Sheriff what are the literal requirements of the law. In spite of such counseling, the members of the County Commission and Sheriff's Department have continued to either ignore the literal requirements of the law or to openly perform acts in violation of them. If Petitioner in her dealing with the Sheriff's Department has brought disrepute on her Court - which she vehemently denies - by requiring that its duly appointed officers comply with the minimum requirements of the law then so be it. Petitioner apparently finds herself between a rock and a hard place in "diligently discharging] [her] administrative responsibilities" under Canon 3(C) and dealing with a system resistant to compliance with either

efficiency of service or the literal requirements of the law. Should she be punished for faithfully and enthusiastically following Canon 3(C)?

(2.) Petitioners Correspondence

The Commission's statement that Petitioner made repeated and almost continuous demands on various county officials substantially mischaracterizes the truth. No doubt Petitioner has written many letters. Petitioner is a product of business where you are taught to put everything in writing to document issues and requests. [FHT p. 305-306; See Appendices A, B, & C]. Petitioner has written letters to the Sheriff, the Board of Commissioners and their Administrative Clerk. Every letter written by Petitioner to the Board of Commissioners involves a subject germane to either the administrative or judicial functioning of the Magistrate Court. All requests for supplies, information, and reimbursement by Petitioner were requests for fundamental items necessary for the basic functioning of the Magistrate Court, and Petitioner has been forced to re-request the same information and/or supplies over and over again. [FHT p. 317-318]. The letters speak for themselves. The letters are not "imperious and demanding in tone" [FHT p. 137], although after requesting the same information sometimes five and six times they should be demanding and imperious. In contrast, see letters from the Commissioners, Exhibits 73, 85 where the snide language of power pours fourth: "Where did you ever get the impression that your salary should be based on that of any other employee of the county" and "We regret that you didn't see fit to attend our meeting today". Finally, see the unsigned, open letter of the Board of Commissioners [Ex. 85 p. 2, 3] read to the news media in a

called meeting of the Board of Commissioners. Also, see Petitioner's measured response in Exhibit 87.

(3.) Petitioner's Orders to Sheriff and his Lawful Deputies

Petitioner is accused of intentionally misusing judicial power in issuing a set of four (4) orders to the sheriff and his lawful deputies. The Commission contends that Petitioner issued identical orders to each and every employee of the sheriff's department, regardless of the position held by such employees, which were beyond the power and authority of a Magistrate to issue, and that there is absolutely no evidence in the record that the sheriff's department had ever refused to serve and/or deliberately delayed the service of any papers issuing from the Magistrate Court. Each and every one of these contentions is erroneous as evidenced by the following review of the record. A review of the four orders [Ex. 71] shows that each order is separate and distinct and reflects one of the four (4) statutory powers and duties of constables, as outlined in O.C.G.A. 15-10-102, which apply to the sheriff and his deputies when the county governing authority has not provided for the appointment of constables, pursuant to O.C.G.A. 15-10-100. Here we have the first of numerous instances of where the facts were misstated by the Commission. On cross-examination Deputy Deese testified that the orders were not identical, that they were separate orders in every file [FHT p. 202]. The orders clearly read that they were issued to only the sheriff and his lawful deputies, and not to any other employee within the sheriff's department.

The reason that fifty six (56) file folders for 56 named employees were sent to the sheriff's department, as explained by Petitioner, was because she did not know which of the

employees were deputies. [FHT p. 330; p. 336, and p. 401] Petitioner's testimony in this regard was corroborated by Chief Deputy Deese's testimony [FHT p. 202-p. 203]. Even though the orders on their face were not issued to any employee, except the sheriff's lawful deputies, and the testimony of both Petitioner and Deputy Deese indicate that Petitioner did not know who were deputies, the Commission would still have this Court believe that Petitioner was attempting to usurp some power over the other employees of the sheriff's department. Once again, the Commission's report is less than candid with the facts.

Each Court may exercise such Constitutional judicial power as necessary in aid of its jurisdiction or to protect or effectuate its judgments. The Constitution of the State of Georgia, Art. VI, Section I, Para. IV. Every Court has statutory authority to control the conduct of its officers, pursuant to the provisions of O.C.G.A. 15-1-3. Accordingly, within reason it does appear that Magistrate Judges do have the power to issue Orders proscribing conduct of its court officers for the proper functioning of their courts. Not only do Magistrate Court judges have the power to issue such Orders but judges are ethically bound under the Code of Judicial Conduct Canon 3(C)(1) and (2) [Formerly 3(b)(1) and (2)], to maintain order and diligently discharge their administrative responsibilities and to require similar conduct of their staff and court officials.

The four (4) Orders specifically address Petitioner's concern over security in her courtroom, the delay in serving warrants and other papers by the Sheriff's Department, and delay in the Sheriff's department in turning over money to the Magistrate Court. [FHT p. 330-35, Ex. 31, 36, 50, 59, 68, 88, 93, 94, 121, 117, 123, 129, 130, 132, 133 (See discussion), 134, 137, and 139]. Many of the exhibits are replete with examples of the continuing failures by the Sheriff's

Department to fulfill its statutory duties which in turn prevented the Magistrate Court from functioning properly. [See Ex. 68, 88, 93, 94, 95, 96, and 133].

An astounding list of factual statements showing that the sheriff and his deputies have failed to perform their duties with respect to the Magistrate Court is set forth in Petitioner's verified complaint filed against the Board of Commissioners of Peach County [Ex. 168 p. 7-11]. Yet, given the enormous amount of facts evidencing the sheriff's department failure to properly provide service to the Magistrate Court, the Commission would have this Court believe that the sheriff was performing his duties and the Petitioner was misusing her judicial power when she responded to such nonfeasance, malfeasance, and misfeasance. After experiencing for over eight months, since her term of office began, the lack of the service required for the proper functioning of the court, Petitioner issued the orders to the sheriff and his lawful deputies. [Ex. 168 p. 10 para. 54]. They were merely a remedial form of notice, outlining the sheriff's and his deputies general statutory duties with regard to the Magistrate Court. Under the circumstances at the time they were issued they were nothing more than a prudent attempt by a dutiful judge to make her court officers aware of their official responsibilities.

(4.) Deese Rule Nisi For Civil Contempt

Petitioner sent the Orders to Deputy Deese at the Sheriff's Department to serve because the Sheriff was on vacation, therefore, Deputy Deese was responsible for performing all the duties of the Sheriff. (FHT 195). Further, Deese was required by law to serve such Orders in the Sheriff's stead. First, Deese told Petitioner that he was serving the Orders, a few days later he advised her that he

had not served any of them. Deputy Deese, as he admitted under oath, lied to Petitioner when he told her that he had served some of the Orders when in fact he had made a conscious decision to refuse to serve the Orders until the Sheriff was back from vacation. [FHT p. 201, 202, 337]. Deputy Deese even makes the admission, under oath, that he felt by telling Petitioner that he was not serving the Orders that he would have been charged with contempt. [FHT p. 201]. There was no deputy sheriff in the county willing to serve the court's Orders on Deese so he was eventually served with a copy of the four (4) orders by Magistrate Court Deputy Clerk, William Cooney, who was appointed a pro tempore special officer, pursuant to O.C.G.A. 15-13-10. [Ex. 82]. Because Deputy Sheriff Terry Deese refused verbally over the telephone to serve the Orders on the other deputies as he was required by law to perform, he was served with a Rule Nisi and ordered to appear at a hearing to determine whether he should be held in Civil Contempt. This event was precipitated by the fact that Petitioner had issued these orders which restated existing Georgia Law precisely because of the failure of the Sheriff's department to perform these duties. Petitioner at the contempt hearing again ordered Deputy Deese to serve the Orders which to this day he has refused to perform. [FHT p. 204]. In spite, of his dishonesty and in spite of his continuing blatant refusal to perform the lawful duties of a Deputy Sheriff, Petitioner "purged" Deputy Deese of any Civil Contempt, after ordering him from the bench to serve the orders on those deputies not present at the hearing, which was attended by most members of the Sheriff's department. Petitioner ruled from the bench. [FHT p. 203, 342-343]. Since most members of the Sheriff's Department voluntarily attended the hearing [FHT p. 194; Ex. 167], and since it was Petitioner's purpose in the first place to only make sure that the Sheriff's deputies were aware of their

official responsibilities with respect to the court, she had each of them give their names, after which she verbally issued the four (4) Orders to them.

When the Commission said, "when said orders were not served promptly enough to satisfy the Respondent, she issued a Rule Nisi to the Chief Deputy Sheriff for civil contempt", it was again misleading this court by mischaracterizing the facts. In fact, it is reasonable to conclude that Petitioner's conduct demonstrates substantial judicial patience and tolerance, especially after her court had suffered eight (8) months from the negative effects of the deficient service by the sheriff's department - deficient service that the sheriff readily admitted under oath. [FHT p.150, 151].

Petitioner has been criticized by the Commission for denying a motion to recuse filed by counsel for the accused; acting as both prosecutor and judge; and for failing to follow the procedures as outlined in Dowdy v. Palmour, 251 Ga. 135, in order to meet due process requirements. First, counsel for the accused failed to present an affidavit in support of his motion to recuse, thus, Petitioner properly denied the motion. [Ex. 167]. Second, it is proper procedure for a judge to singularly hear civil contempt matters, and such is done every day in courts throughout this State. Third, the procedure outlined in the Dowdy case presupposes the possibility of some form of punishment being meted out by the court, and is relative to criminal contempt cases. Deese was never in jeopardy of such punishment, i.e.., admonishment, fine or jail. This was a civil contempt proceeding in which the Rule Nisi was used as a vehicle to bring him before the court, so that the remedial procedure of giving him a direct order from the bench could be accomplished. Petitioner asserts that under such circumstances Dowdy is not applicable. Instead of indicating

a judge who misuses the power of her office, such application of a remedial cure to a long-standing problem, disobedience of its court officers, suggests a judge with a reserved and thoughtful temperament. Furthermore, to deny any court the prudent use of such remedial power would invite civil anarchy by its court officers and disrespect for its judicial authority.

(5.) Poole Rule Nisi For Criminal Contempt

After it became obvious to Petitioner that no deputy was going to serve the sheriff with a copy of the orders, Petitioner called upon the coroner to serve the sheriff. Petitioner gave him an order to serve the Sheriff [FHT p. 338-339, Ex. 81] and a copy of the four orders to serve on the Sheriff. [Ex. 71]. Coroner Poole, much like the County Commissioners, received incorrect legal advise and, acting on that advise, refused to serve the Sheriff with the Orders. Under Georgia Law, O.C.G.A. 45-16-8, the coroner is authorized to serve the sheriff when the sheriff or his deputy refuses to serve a writ or other process. When Petitioner attempted to explain to the Coroner the procedure for serving a sheriff in Georgia, Coroner Poole stormed out of the Magistrate Court refusing to serve anything, saying, "I am not serving anything you say, I don't have to". [FHT p. 338, 339; Ex. 75, 77]. Petitioner, thereafter, issued a Rule Nisi for a criminal contempt hearing with regard to Coroner Poole for his willful disobedience to a lawful order of the court. There was no deputy sheriff in the county willing to serve the court's papers on the coroner so the rule nisi was served on Poole by Brooks Livingston, who was appointed a pro tempore special officer, pursuant to O.C.G.A. 15-13-10. [Ex. 78]. On September 23, 1993, after Deese's rule nisi hearing, Petitioner called the Sheriff and arranged a meeting between

them to discuss the service the Sheriff's department was providing the court. At the meeting which was held that same day, the Sheriff agreed to solve the problems if Petitioner would continue or cancel the Coroner's rule nisi hearing scheduled for September 24, 1993, at 4 p.m. Petitioner, in good faith, issued an indefinite stay with respect to Poole's hearing and instructed her deputy clerk the next morning to call Coroner Poole and advise him of the stay. [FHT p. 341-342]. At that time no attorney had entered an appearance on behalf of the Coroner. [FHT p. 342]. The contempt rule nisi hearing having been indefinitely stayed, Coroner Poole, was not then, nor has he ever been, held in contempt. [FHT p. 342; Ex. 86]. Much of this is in sharp contradiction to the summary of evidence in support of the Commission's FINDINGS. Certainly, these facts do not describe an unreasonable or uncooperative judge who abuses her power, but they do make one wonder about the conduct and motivations of some of the other elected officials in Peach County.

(6.) Events Preceding Intimidation Of Court

Some events that lead up to the subject act of the attempt to intimidate Petitioner, which have not as yet been discussed may, when accurately detailed, shed some additional perspective on the matter. October 1, 1993, was the beginning date for the 1994 budget. For months Petitioner had tried in vain to obtain the necessary information from the Board of Commissioners so that she could make an intelligent and sensible budget presentation to the Board. [Ex. 16, 20, 21, 30, 40, 53, 61, 57, 69]. All requests for information or assistance were totally ignored. [See Exhibit Summary, Appendix B]. On September 15, 1993, Petitioner requested that she be given an annual salary

increase in the next budget. [Ex. 72]. On September 20, 1993, Petitioner's request for a salary increase provoked an unusually quick response by Chairman Bartlett in the form of a notably sarcastic letter. [Ex. 73]. On September 22, 1993, the County Commissioners wrote to Petitioner and asked her to meet with them at a called meeting on September 24, 1993, at 4 p.m., which concerned "the office of Magistrate Judge". [Ex. 83]. Again, the Commission misstates the facts in their evidentiary summary, which states that Petitioner refused to meet with the County Commissioners. Petitioner in a response on September 22, 1993, simply requested an adequate notice so that she could properly prepare for the meeting - she did not refuse to attend the meeting. [Ex. 84].

(7.) The Intimidation Of The Court By The Board Of Commissioners

The letter that was read at the meeting called on September 24,1993, before an assemblage of newspaper and television reporters [FHT 127], and subsequently mailed to Petitioner is at the root of the instant matter. [Ex. 85]. The letter was read publicly the day after Petitioner held Deputy Deese's rule nisi hearing for civil contempt and immediately after the hour scheduled for Coroner Poole's rule nisi hearing for criminal contempt, which Petitioner indefinitely stayed. [Ex. 86]. The letter itself states the primary reasons for its creation and delivery to Petitioner, which in pertinent part reads:

> ...The last straw was your recent group of memos to Sheriff Becham where you ordered him to do certain things. If you have a problem with the Sheriff, it is your responsibility to get with him and work out

> whatever the situation requires- and not to just serve papers on him. In addition, you have brought contempt charges against his deputy and against the County Coroner. This is not the way to establish a good working relationship with people... [Ex. 85].

The threat aspect of the letter reads:

> ...We have decided to give you 30 days to see if you can get your act together. If you continue with your present attitude, causing problems and conflict in the county government, we will have no choice but to recind your salary increase and return you to the original salary granted to you by the previous commissioners... [Ex. 85].

A reasonable person could conclude just from a reading of the letter, as Petitioner did, that the County Commissioners were attempting to influence Petitioner's conduct with regard to the Court's Orders and the contempt proceedings . However, there is even stronger evidence that this is so. In his testimony before the Commission, Chairman Bartlett testified that he met Coroner Poole to discuss Poole's pending rule nisi hearing for criminal contempt. [FHT p. 77]. After he met with Coroner Poole, Bartlett testified that, "[I] felt like at that point something had to be done and the commissioners got together and decided that we needed to see what we could do". [FHT p. 77]. Bartlett then testified that, "I checked with our attorney and the county attorney advised me that since we had increased her pay, we could decrease her pay. So we wrote a letter to her..." [FHT p. 78]. Further, Bartlett was asked, "When did you all decide you were going to do this?" And

Bartlett answered, "This was , as I recall, almost immediately after she brought the contempt charges against Mr. Poole and then would not come into the courtroom." [FHT p. 126-127]. Bartlett also admits, under oath, that the County Commissioners were trying to use their economic leverage to change Petitioners conduct. [FHT p. 133-134].

Petitioner did perceive that she was being threatened and intimidated in her judicial decisions and the proper functioning of her office by the County Commissioners' September 24, 1993 letter [FHT p. 349, 412, 438], and had the Commissioners been legally able to reduce her salary they would have done just that. It was not until the County Commissioners' counsel changed his legal opinion that the threat to reduce Petitioner's salary did not become a reality. [FHT p. 259].

The County Commissioners admit that they acted on incorrect legal advise in deciding to reduce Petitioner's salary. [FHT p. 261-262]. Furthermore, they did not act in "good faith", even though they got bad legal advise. Not only had Commissioner Bartlett met with the County Attorney seeking legal advise on whether they could vote to reduce Petitioner's salary prior to issuing the September 24th letter, but in Commissioner Jack D. Taylor's deposition, he stated unequivocally that the purpose behind threatening to reduce Petitioner's salary was to "punish" Petitioner. [Deposition of Jack Taylor 59, 60]. Mr. Taylor, of course, denied making this statement in the hearing before this Commission stating instead that the purpose of the threat was that he hoped "harmony should prevail". [FHT p. 259]. On the other hand Bartlett did note that the decision by the previous Board of Commissioners to reduce Petitioner's salary after she was elected, but before she took office, was a "political" decision. [FHT p. 129].

(8.) Petitioners Response To Letter Threatening To Reduce Salary

Petitioner responded initially to the County Commissioners September 24th letter by indicating in her letter of September 27, 1993, that she was reluctant to comment on the matter unless it was official action by the board. She did refer to the letter's content as diatribe which, in fact, accurately described the letter. Webster's dictionary defines diatribe as meaning: 1. a prolonged discourse, 2. a bitter and abusive speech or writing, 3. ironical or satirical criticism. [Ex. 87].

For some unknown reason relative to this time period, the Commission makes a point to state that "after the September 27, 1993, letter, Respondent always signed her correspondence over the title "The Honorable Linda O'Neal". [citing Ex. 87 forward]. But as usual the Commission was wrong in their statement of the facts. Although restrained to stay within the record, Petitioner can and does offer Exhibit 70, a letter dated September 13, 1993, for proof that the Commission misstated the facts again.

The Commission states that 'nowhere in ... this record is there any mention of the alleged "threat" which subsequently gave rise to the felony warrants'. This is not a true statement. The Commission's own Exhibit 160, news articles, indicates that newspapers perceived the County Commissioners' September 24th letter as communicating a "threat".

(9.) The Issuance Of Arrest Warrants Against The County Commissioners

Following receipt of the letter by the Board of Commissioners which threatened to reduce her salary to the

statutory minimum unless she "got her act together", Petitioner did not "act out of personal animosity and anger" and have the Peach County Commissioners arrested, but rather, she felt the Commissioners were trying to "control the court and the actions of the court" and tell her "how to run the court". [FHT p. 349, 355]. Instead of acting out of animosity and anger, Petitioner consulted the law books to determine whether the action by the Board of Commissioners was legal; asked the Board if the resolution adopting the letter was official Board action - which they affirmed [FHT p. 132, 351]; contacted her District Attorney, Mr. Sparks [FHT p. 355-357]; contacted Judge Hughes of Twiggs County [FHT p. 357-359]; talked to Danny Porter, a District Attorney from Gwinnett County whose name was chosen from the phone book [FHT p. 357-358]; talked with Judge Judy Cooper from Clay County [FHT p. 359]; called Judge Kendall Jordan in Hart County and faxed him information [FHT p. 359-361]; faxed the affidavit in support of the arrest warrant to Wayne Purdom, the President of the Magistrate's Counsel [FHT 359-360]; called the Attorney General's Office [FHT p. 361-362], and spoke to Judge Burke from Houston County [FHT p. 362]. Of the several individuals Petitioner contacted and consulted or tried to contact with respect to the criminal nature of the September 24th letter, some did not respond, some who agreed that a crime had been committed had no authority to issue criminal warrants, and all judges who had the authority to issue criminal warrants and who agreed that a crime had been committed refused to issue criminal warrants <u>because of political ramifications</u> [FHT p. 358, 359], with the exception of one. That Judge, Judge Kendall Jordan of Hart County, issued the warrants. The Commission gives the impression that those who refused to issue warrants did not really agree that a crime had been committed or that Petitioner was not truthful in her

testimony, and they accomplish this impression by making the statement, "all refused to issue the requested warrants". Thus, once again mischaracterizing the evidence. The Commission would lead one to believe that Petitioner sought out a personal friend to issue the warrants, but she did not. [FHT p. 364]. Instead, she correctly sought a neutral and detached magistrate judge to review the matter and issue any justified warrants. [FHT p. 359, 426]. Judge Jordan found that sufficient probable cause existed to believe that the County Commissioners had violated O.C.G.A. 16-10-97 and issued the warrants. As Judge Kendall Jordan noted in his deposition, he did not even recognize Petitioner when she came in his door. [Deposition of Jordan, p. 22]. Judge Kendall Jordan felt comfortable signing the warrants after reviewing the law precisely because Petitioner "had waited a period of time. It wasn't like it happened yesterday, this afternoon, or the day before yesterday and I want a warrant today". [Deposition of Jordan, p. 19]. To her credit, Petitioner did wait two months before seeking warrants, as Judge Jordan so aptly noted. Once the warrants were signed on December 21, 1993, to prevent publicity, Petitioner took the warrants with her back to Peach County, and secured them in her office late that evening. The next day, December 22, 1993, Judge Jordan called Petitioner and asked her to hold the warrants so that she could call the Attorney General's office to find out which county's name should go on the warrants, Hart or Peach. [FHT p. 361-362]. Petitioner called the Attorney General's office and Judge Burke. [FHT p. 362].

(10.) Reason Warrants Held 7 Days Before Delivery To Sheriff

Besides the two (2) day delay caused by the issue over the proper county name to be on the warrants, as related earlier in paragraph 9. above, the Christmas Holidays were a factor in the seven day delay from the time the warrants were signed, December 21, 1993, and when they were delivered to the Sheriff for execution. This Court can take judicial notice of the fact that Christmas Eve, December 24, 1993, fell on a Friday in 1993 and Christmas was on Saturday. As a result of Christmas falling on a weekend, the following Monday, December 27, 1993, was also a holiday. The next business day was Tuesday, December 28, 1993. Also, Petitioner did not want to interfere with the Commissioners' Christmas holidays, so she waited until December 28, 1993, to deliver the warrants to the Sheriff's Department. [FHT p. 363]. This deference shown the County Commissioners by Petitioner is inconsistent with the notion that she sought the warrants out of animosity for the commissioners or in retaliation for the September 24, 1993, threat to reduce her salary, as the Commission would have this Court believe.

(11.) Both Petitioner And Magistrate Court Were Victims

Petitioner was in the unique position of being both victim of a crime, with its concomitant responsibilities as lay prosecutor, and the holder of a judicial office against whom she believed a criminal offense had been committed. [FHT p. 355]. O.C.G.A. Section 16-10-97 makes it a crime to endeavor to intimidate or impede by any threatening letter or communication any court of any county or a court officer which arises out of or is related to the performance of the

court officer's official duties, whether the proscribed activity occurs while the court officer is actively engaged of the matter giving rise to the offense or whether the proscribed activity occurs at some other juncture. Moon v. State, 199 Ga. App. 94, 404 S.E.2d 273 (1991). Further, the word "endeavor" is a synonym for "attempt", which means that the threat contained within any threatening letter or communication does not have to be carried out for there to be completion of the crime. The crime is certainly complete upon its receipt and perception as a threat by the victim. As stated earlier, Petitioner did perceive that she had been threatened by the County Commissioners' September 24, 1993, letter. [FHT p. 349, 412, 438].

(12.) Petitioner Did Not Notify The News Media

The Commission, when it attempts to discredit Petitioner, by noting that within 15 minutes of Petitioner's delivery of the warrants to the Sheriff, the sheriff's office began receiving calls from the news media conveniently overlooks the probability that it was someone from within the sheriff's department who originated the call to the news media. It was the sheriff's department that staged the mass turnout of almost all of the deputies at Deputy Deese's Rule Nisi hearing [FHT p. 194; Ex. 167], and it was the County Commissioners who notified the news media to be present for the reading of the letter dated September 24, 1993, which threatened to reduce the Petitioner's salary. [FHT p. 127]. Petitioner had nothing to do with the news media being called, as she so testified [FHT p. 408-409], but the Commission without any facts to support their statements, once more mischaracterizes the evidence.

(13.) Petitioner Should Be Reimbursed For Official Travel Expenses

Petitioner's claim for reimbursement for her mileage to Hart County to obtain the warrants was a proper claim because the criminal charges, in fact, arose out of her official capacity. Because it was an official expense paid personally by Petitioner, it should be reimbursed.

(14.) Dismissal Of County Commissioners' Arrest Warrants

The Commission's comment that the criminal charges against the Commissioners were dismissed is meaningless. As this Court is aware, it is solely within the prosecutor's discretion whether or not to prosecute a particular crime. Warrants are routinely dismissed in every county in this State, not on the basis of whether or not a crime in fact occurred, but rather on the State's ability to prove whether a crime occurred. Prior to the Houston County District Attorney deciding to dismiss these warrants, three (3) magistrate court judges and a district attorney had already indicated that they believed the criminal elements of Intimidation of a Judicial Officer had been met. [FHT p. 357-359]. The individual motivations of why the specially appointed prosecutor dismissed the warrants were not before the Commission nor were they relevant.

(15.) Public Statement After Dismissal Of Warrants Was Ethical Comment

Regarding Petitioner's comment in the Byron Gazette, Petitioner had, and still possesses, an absolute right under the First Amendment of the United States Constitution and

concomitant provision of the Constitution of the State of Georgia to comment on a proceeding in which she is a victim. Her comment in the Byron Gazette was truthful and accurate, and was not a comment about a proceeding pending before her court, and the statement itself was within the guidelines of the Code of Judicial Conduct. [FHT p. 389-390; Ex. 125]. She was in the position of being a victim of a crime. Should victims of crimes not be allowed to use the public forum of newspapers to express their displeasure when the State prosecutor dismisses a case in which they are the aggrieved party?

(16.) Publicity Relative To The Magistrate Court

The Commission claims that Petitioner's conduct is responsible for the negative publicity as may be found in the news stories in this record. Petitioner totally denies responsibility for any such negative publicity. First, many of the news articles enclosed in Plaintiff's Exhibit 160 are not stories of controversy, but just plain informative articles. Second, while some of the news articles report news of a disputed or controversial nature, the negativism is not of the degree that promotes public ridicule, embarrassment, or disgust to a reasonable person. Most importantly, Petitioner is the victim of any negative publicity emanating from any of the news stories, not the perpetrator. Any truthful and factual reporting of Petitioner's conduct would not cause embarrassment to either the public or the judiciary. Lastly, except to that which is permitted by the Code of Judicial Conduct, Petitioner has not commented to the press. Her refusal to comment has resulted in some of the news being biased and inaccurate. Moreover, those individuals bent on political mischief have apparently, as is disclosed by the

articles themselves, seized upon the opportunity to have their say in the press knowing that the Petitioner had to remain silent.

(17.) Complaints From Citizens Of Peach County

Regarding the complaints from citizens allegedly embarrassed by Petitioner, Petitioner replies that the role of judge is not a popularity contest. This is especially true where the opining party is powerful and entrenched, and is being challenged with respect to its lethargic ways. Over half of the persons who complained to the Commission, including Mr. Jack Taylor, Mr. Wilton Walton, Ms. Ann Poole Ward, Mr. Pat Ward, Mr. and Mrs. Orvin Bergmen, Commissioner Charles Bartlett and Mrs. Mary Bartlett, Mike and Joan Pearson, and Jack Hunnicutt, attend the same church. [FHT p. 269, 70]. Several are former co-workers. And nearly all are related by blood, marriage, or business to members of the Peach County Commission. To Petitioner's knowledge no complaints were filed with the Commission until after the Commissioners attempted to unlawfully intimidate Petitioner and were subsequently arrested. All but two (2) complaints were written within approximately one (1) week of one another. [See Appendix A; Ex. 144-159]. Only two of the Complainants have ever even been in Petitioner's courtroom. The close group of apparently solicited complaints totaled 15 from a county with over 20,000 population. To Petitioner's knowledge no complaints were ever filed with the Commission prior to or after this one small group. If Petitioner has really caused public embarrassment by her conduct why are there no other complaints at any other time? Petitioner asserts it is because she is not an embarrassment to the public.

(18.) Commission vs. Trial Court Review Of Issues In Petitioner's Civil Suit

After experiencing for eighteen months the County Commissioners' and there employees' inappropriate and uncooperative behavior, which has negatively affected the court, Petitioner filed a civil complaint against them with a demand for jury trial of the factual issues. [Ex. 168]. The Commission states that Petitioner's civil suit generally seeks to rehash many, if not all, of the issues giving rise to this proceeding. This is simply not true. There are many substantial differences and a jury verdict in the civil case could be quite opposite from the Commission's Findings.

(19.) County Commissioner's Testimony Concerning The Reduced Fee Schedule

Petitioner lowered the fees charged in the Magistrate Court effective September 1, 1993, and issued an order pursuant thereto by the authority granted in Uniform Magistrate Court Rule 1.2, which was posted in the court. [FHT p. 319-320]. Petitioner reduced the filing fees of Peach County because citizens of Peach County had indicated to her that they felt the $48.00 civil suit filing fee was too high. [FHT p. 320-321]. In response, the fees charged by the Magistrate Court for most actions were lowered to $25.00 on September 1, 1993. When citizens began taking advantage of the reduced fee, taking out warrants then wanting to dismiss them, Petitioner raised the cost of dismissing a misdemeanor warrant from $25.00 to $50.00 on November 1, 1993. [FHT p. 321-322]. The fee was raised because, among other reasons, such actions caused excessive paperwork and wasted the Sheriff's time. [FHT p. 321]. In short, Petitioner, by reducing the fees charged by the Magistrate Court, was

responding to the economic needs of the citizens of Peach County. All money assessed as a fine by the Magistrate Court continued to go to the Peach County Commissioners and there has never been any allegation that Petitioner reduced the fines she assessed in her court. On September 13, 1993, Petitioner as discussed earlier issued a set of orders to the Sheriff and his lawful deputies which was followed by rule nisi hearings for contempt being issued against Deputy Deese and Coroner Poole. [September 23 & 24,1993, respectively]. Immediately following these events on September 24, 1993, the County Commissioners published their letter threatening to reduce Petitioner's salary.

Taylor testified that when he asked Petitioner why she would reduce the fee for the service provided by the magistrate that her response was:

> "... because you and Charles Bartlett stuck your nose into something that didn't concern you...This issue is between me and the Sheriff..." [FHT p. 241-243; Ex. 90].

The Commission points to the alleged dialogue between Taylor and Petitioner as evidence of disgusting and demeaning conduct prompted by personal animosity and political motivation. Besides completely denying that this conversation ever took place [FHT p. 325-328], Petitioner explained at length to the Commission how such a conversation was, in fact, an impossibility. Petitioner explained that the alleged comment could not have been said because at the time the fees were lowered, September 1, 1993, the subsequent issuance of the orders to the sheriff and his lawful deputies and the rule nisi hearings associated therewith had not yet occurred. Taylor gets trapped in his lie under cross-examination when he recognizes that the court fees were reduced two (2) weeks prior to the issuance of the Orders to the Sheriff. [FHT p. 257-258]. Further, Taylor is

shown to be less than candid when he testified that he had never seen the fee schedule before being shown it in the hearing [FHT p. 256-257; Petitioner's Ex. 2], but in fact he had seen it at his deposition on August 5, 1994, and Petitioner's Exhibit 2 still bears the deposition Exhibit No. 3 identification sticker on it. [Petitioner's Ex. 2; Taylor's Deposition p. 39-40]. Even though the timing of the events clearly indicate the temporal impossibility of the statement being made, the Commission found Taylor's testimony persuasive. Petitioner respectfully asserts that Taylor's testimony is not persuasive, is less than candid. Petitioner respectively submits to this Court that the Commission's reliance on such evidence and their characterization of same as being persuasive is so grossly misstated that the Commission's impartiality must be seriously questioned.

(20.) Petitioner's attitude is not vindictive

Petitioner, in a very professional and business-like manner attempted to communicate with the County Commissioners by written correspondence on all matters that would possibly be of concern or interest to them or which was relative to or effected the Magistrate Court. Plaintiff's compilation of exhibits fairly demonstrates the correspondence Plaintiff communicated to the County Commissioners. Appendix B provides a quick summary of said correspondence. As can be seen there is absolutely nothing unreasonable about any of the requests contained in Petitioner's correspondence. What is strikingly unusual is the numerous requests for the same equipment, supplies, or information. Such need to make repeated requests clearly evidences the unwillingness to cooperate or incompetence of the individuals to whom the requests were made. After experiencing such difficulty for eight months there is a

natural tendency to be somewhat less polite at times, as Commissioner Bartlett recognized. [FHT p. 137]. The Commission selected two exhibit letters [EX. 61 & 67] and presented them out of context to support their contention that Petitioner has a vindictive attitude. However, no reasonable business or professional person who read Petitioner's letters, including the August 23 and August 25, 1993, letters [EX. 61 & 67], would thereafter conclude that Petitioner had a vindictive attitude. The Commission's taking out of context and mischaracterizing the evidence does show its apparent vindictive attitude towards Petitioner.

(21.) Petitioner Believes That She Has Acted Properly

At the close of Petitioner's testimony Judge Lawson asked Petitioner the following question:

> ...In your judgment today, were all of your actions justified? Do you think you acted properly? I don't mean legally, I am talking about as a matter of judgment, in your judgment today, do you feel that ... the way you handled all these problems was the right way to do it, do you feel that way today?
>
> Petitioner replied: Yes, sir. [FHT 392, 393].

The Commission states that her answer is most telling. But the Commission doesn't bother to explain that vague conclusive remark, as if there is some coded meaning that is suppose to be understood by those qualified to hold judicial office. Petitioner doesn't express herself in any kind of code, she thinks straight, talks straight, and acts straight. She doesn't need to delve into coded language and meaning to be understood. There is nothing wrong with her attitude or judgment, legally or otherwise, and the record shows such by

clear and convincing evidence. Petitioner admitted that she was not perfect, that she was human and that she could make a mistake. [FHT p.393, 394].

(22.) Commission's Denial Of Due Process To Petitioner

(a.) Commission's Bias Attitude Towards Petitioner

The prejudice and bias shown Petitioner by the Commission at the formal hearing is overwhelmingly made clear by the following record colloquy between Mr. Reinhardt and Petitioner, which occurred relative to Petitioner's civil complaint against the Peach County Board of Commissioners [Ex. 168]:

By Mr. Reinhardt:

Q: Well, with respect to your salary and the salary of your clerks and whether or not you have constables, do you understand those are decisions that are made by the County Commissioners in Peach County, even though they are an independent branch of government?

A: They make provisions in the budget and funds for it, yes.

Q: In this lawsuit, you are trying to get the courts to mandate that, are you not?

A: Sir, I am not going to discuss that. That is a pending matter in another court.

Q: Ma'am?

A: That's a pending matter in the court, and I don't think I should discuss that pending lawsuit.

Q: Aren't you the plaintiff in that case?

A: Yes sir.

Present in the courtroom hearing audience during this testimony was three (3) of the defendants in the pending suit, Commission Chairman Charles Bartlett, Commissioner Jack Taylor, and County Administrator Marcia Willis. Sheriff Becham and Deputy Deese were also in the audience. Earlier in the hearing, permission for the witnesses to sit in after they gave their testimony was requested by Ms. Oakley and granted by Judge Lawson. [FHT p. 79, 139].

This attempt by a member of the Judicial Qualification Commission sitting en banc to get Petitioner to discuss her civil suit outside of the court having jurisdiction in the matter and without the aid of retained counsel, and in the presence of party defendants smacks of one of the most gross and egregious ethical improprieties imaginable. Canon 3B.(9), pursuant to the commentary provisions, explicitly prohibits judges from commenting publicly on a mandamus case to which they are a party. If it had not been for the courage, wisdom and ethical judgment of Petitioner to refuse to answer further questioning when she did, serious harm to her litigation may have occurred and she would then have been in violation of the Code of Judicial Conduct. The Commission's prejudice towards Petitioner as shown by this unethical hearing procedure deny Petitioner the due process to which she is entitled.

(b.) Prejudicial Interruption Of Witness's Testimony

The primary reason, according to the Commission, that an investigation and formal charges were brought against Petitioner was because of the arrests of the Peach County Commissioners on felony warrants for intimidation of a court and a court officer, requested by Petitioner. Indeed, the record reflects the importance that matter played in the formal charges being filed against Petitioner. So when testimony regarding the key element of the crime was being elicited on both direct and cross examination, the hiatus moments of the proceeding, no interruption of the testimony should have been allowed by the trial judge except for a most important reason. Certainly a casual break or lunch break is not such a reason. However, Judge Lawson did both. On direct examination as soon as Bartlett answered "no" to the question as to whether the September 24, 1993, letter was intended as a threat to Petitioner, Judge Lawson took a 10 minute recess. On cross examination Petitioner's counsel had just asked Bartlett to look at and to consider the language in the letter deemed to be a threat by Petitioner when Judge Lawson said, "let's stop here for lunch". Petitioner's counsel had just set up the most important cross examination question of the hearing and his stride was just abruptly terminated. Petitioner's counsel was not even asked how much longer he might be with the witness or if he had any objection to breaking for lunch at that time. Such conduct was highly prejudicial to Petitioner's defense and it denied her due process.

(23.) Other Charges Not Discussed In Commission's Evidentiary Summary

(a.) Staff Not Fired And Daughter Left In Charge Of Office

Paragraph F of the Commission's Factual Bases for the charges is a paragraph filled with misstatements and faulty impressions. Petitioner did not fire her staff when they requested raises and then leave the court in the hands of her 18 year-old daughter as this paragraph recklessly suggests. Remaining certified as a Magistrate Court judge requires certification classes. These certification classes are usually held during the week. Petitioner went to great lengths to ensure that the people of Peach County would be adequately served while she was away from office during the period of July 13-15, 1993, at a certification class. Exhibit 44 clearly shows that Petitioner not only gave notice of her need to be out of the office but she sent this notice to the Peach County Sheriff's Department, the Fort Valley Police Department, and the Byron Police Department. This notice was posted on the door to the Magistrate Court. Petitioner obtained the services of Judge Kelly Burke to cover her duties while she was away and left forwarding numbers for her personally, including two telephone numbers and her statewide pager. Additionally, as if that were not enough, Petitioner drove back to Peach County each night to hold court from 5:30 until 6:00 p.m. [FHT p. 377-79]. Is this not exactly the kind of conscientious judge we want in Georgia? You will recall that her predecessor worked approximately 3 hours per day as a part-time job and was paid over $30,305. [Ex. 3].

The employees of the Magistrate Court serve at the pleasure of the magistrate. O.C.G.A. 15-10-106. Petitioner, as is reflected in the exhibits, repeatedly attempted to get the

County Commissions to approve new positions or pay raises for her employees. [FHT p. 81, 385-386]. The Peach County Board of Commissioners declined. [See Ex. 33, 42, 43, 45, 46, 47, 48, 99, and 102]. Petitioner also counseled with her employees detailing exactly what responsibilities she expected them to perform. [FHT p. 381-382; See Ex. 46]. Petitioner dismissed Patty Sanders during her probationary period of temporary employment because of a lack of professionalism and poor work habits. [Ex. 47]. Donna Clark resigned because of a perceived violation of her "civil right". [Ex. 48].

(b.) Alleged Ex Parte Communication

Paragraph II of the Factual Bases is likewise filled with misstatements and misrepresentations concerning an alleged ex parte communication. Petitioner never informed Ms. Moore that she was changing her ruling nor that a new ruling was being issued in her favor. Petitioner did ask Ms. Moore, when she returned a call from one of the Judge's clerks and no one except the Judge was there to answer the phone, to go to the bank and get the present balance on a loan Ms. Moore had obtained for another person. Petitioner was keenly aware at the first hearing of the exact balance on the loan but this information had changed between the time of the first ruling and the second ruling because one bank payment had come due and past in the interim. Petitioner does not feel that she engaged in an ex parte "investigation" but, in explaining her conduct to the Commission, noted for the Commission that the procedure in this situation had changed and that she has since continued a case and brought both parties back. [FHT p. 375]. There is no question but that the correct legal result was reached and, in fact, the case was affirmed on appeal. [FHT p. 370, 372]. Also, it should

be noted that Petitioner committed this alleged ex parte communication within the first three (3) months of being in office, without any prior legal training whatsoever, with the background of a high school diploma and lots of business experience, and prior to having any formal training in civil procedure and judicial ethics.

(c.) Petitioner's Performance Undermined By County Commissioners

Finally, concerning Paragraph VI of the Factual Bases of the charges, Petitioner has attempted to perform the duties of the office of Magistrate Court Judge of Peach County in an efficient, intelligent manner. By the Board of Commissioners' actions in denying Petitioner a comparable salary to that of her predecessor, by denying salary increases for her employees, by denying her request for temporary employees to complete the backlog of work, by refusing to fund constable positions for the efficient service of process, by refusing to fund overtime work, by refusing to authorize necessary office supplies, by refusing to provide her with access to her office, by refusing to provide minimal courthouse security, by refusing to supply functioning chairs for individuals to sit in, by refusing to provide adequate air conditioning during the hot summer months, by refusing to give Petitioner a breakdown of her own budget so she could allocate her resources, and, finally, by the Commissioners threatening to cut her salary to the statutory minimum of $13,125; the Peach County Board of Commissioners has done exactly what Hamilton feared in the Federalist Papers. In short, it is not the judiciary that should be feared but rather the branches of government that control the purse and the sword.

(24.) Denial Of Petitioner's Motion For A Directed Verdict Was Error

Petitioner's Motion For Directed Verdict presented at the close of the Commission's case in chief was denied by the presiding hearing officer without presenting it before the entire Commission in violation of Rule 1 (b) of the Rules of the Judicial Qualifications Commission. Such ruling was a ruling on the merits of the case and by the Commission's Rules a majority of its membership was required. Accordingly substantive error resulted and denied Petitioner due process.

CONCLUSION

Based on the foregoing Petition And Supporting Brief, Petitioner respectfully requests that this Court overrule the FINDINGS AND RECOMMENDATIONS of the Judicial Qualifications Commission, allow for extended oral argument including the presentation of witnesses and thereafter dismiss all charges filed against her by said Commission.

Respectfully submitted,

/s/
PETE C. WHITLOCK
GEORGIA BAR NO. 756235
ATTORNEY FOR PETITIONER

BRUCE S. HARVEY
GEORGIA BAR NO. 335175
ATTORNEY FOR PETITIONER

Magistrate judge issues statement

Editor's note: Last week it was reported that Houston County District Attorney Ed Lukemire had made the decision to dismiss intimidation charges against all five Peach County Commissioners. The charges against the commissioners had been brought by the Peach County Magistrate Judge in late December 1993. Following (in its entirety and unedited) is Magistrate Judge Linda O'Neal's official response.

Houston County District Attorney, Mr. Ed Lukemire, the special prosecutor handling the court intimidation charges against the Peach County Commissioners has dismissed the warrants. A decision not to prosecute any case is within the discretionary power of a prosecutor under Georgia law. The prosecutor's discretion is part of the checks and balances incorporated into the American legal justice system. I foremost support the justice system and prosecutor discretion, so my disagreement with Mr. Lukemire's decision will become less important to me as I continue to serve the citizens of Peach County who seek fair, equal, and impartial justice.

The events that preceded the charges may interest the inquisitive reader, so I offer the following detail.

For some, life as an elected official is nothing more than a pastime or game, but for me it is serious business. When I began public service as Chief Magistrate Judge of Peach County, I also began a relationship with certain other elected and non-elected officials who had been in office for many years. That relationship was challenged by some officials who attempted to influence me with the

contemptible political idea which goes, "the way to get along is to go along". I balked because I believe such political thinking promotes and perpetuates mismanagement, injustice, and corruption in government. Instead, I chose to honor my oath of office, to duly and faithfully perform all the duties required of me by law, and to support the Constitution of the United States and of this state. I am determined that as long as I am in office that equality, fairness, impartiality, and absolute adherence to the Georgia Constitution, Statutes, and Case law with respect to all persons coming before and matters pertaining to the Magistrate Court will never be denied the people.

Generally, I was expected to accommodate certain officials' personal whims, and to adjust to apparently long-standing customs, practices and procedures of other government officials, regardless of their propriety. My daily documentation of court activity and matters for 1993 is in excess of 700 pages. This documentation is open to the public for review during normal court hours. It evidences some of the improprieties, uncooperativeness, and incompetence I have faced while in office and it clearly shows the exhaustive effort by me in the form of letters, memo's, telephone calls, and meetings to appropriately respond to such problems.

Hundreds of examples could be stated that demonstrate the problems, but the following should make the point. Frequently, civil and criminal hearings were delayed or had to be postponed because court process had not been properly or timely served, or because law enforcement officers were late or failed to appear or failed to appear with the proper documents. After eight months and many unsuccessful attempts to resolve non-judicially these

disruptive actions or omissions, the court took official action. It exercised its constitutional and statutory powers to control the conduct of its officers by issuing orders to various officers giving them personal notice of their statutory duties and responsibilities with respect to the court. The court's officers to whom the orders were given willfully refused to serve those orders, which prompted the court to institute contempt proceedings against them. The court's judicial contempt power was used as a last resort to preserve order and decorum in the court, to compel respect and obedience to its lawful orders, and to aid in its administration of justice.

Additionally, requests pursuant to Georgia law for necessary supplies and equipment for the proper functioning of the court, although provided for in the court's budget, were regularly ignored or denied. When requested supplies and equipment were provided, it was usually after several requests for the same items had been made or after an inexcusable period of delay. This problem is still occurring.

Necessary administrative written or oral correspondence from the court to county officials or their offices is repeatedly ignored, requiring numerous follow-up letters, memo's, or telephone calls. For example, for over 12 months many letters were sent and telephone calls were made which sought past and present court fiscal budget information from the county clerk and Board of Commissioners. The court needs this information to properly operate and to administer its business. Yet, at the present time nearly all the information requested concerning the court's fiscal budget has not been provided.

Responding to the court's contempt proceedings as previously mentioned, the Board of Commissioners publicly

and in the presence of the news media read a letter directed to me, wherein it was stated in part, "The last straw was your group of memos to Sheriff Becham where you ordered him to do certain things... In addition, you have brought contempt charges against his deputy and against the County Coroner...We have decided to give you 30 days to see if you can get your act together. If you continue with your present attitude...we will have no choice but to rescind your salary increase and return you to the original salary granted to you by the previous commissioners." This statement was read approximately one hour after one of the scheduled contempt hearings.

A simple check of the state law would have revealed to the commissioners that the Georgia Constitution and Statutory law prohibits the reduction of a judge's salary during his or her term in office. Also the Georgia Constitution and Statutes provide that the executive, legislative, and judicial branches of government are to be totally independent and the Georgia Supreme Court has upheld the judiciary's independence. Accordingly, a Board of Commissioners does not have legal authority to supervise any court actions, proceedings, administration, or personnel. Besides, it is generally understood and accepted that government works best when each branch seriously focuses on genuinely fulfilling its own functions for the people as prescribed by the law.

I hope this information provides interested individuals with some insight into the present administration and past actions of the Magistrate Court of Peach County.